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MONTANA LEGISLATIVE HISTORY

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Bill House _____ Senate 349

History and final status sheet X
Introduced bill X
Fiscal note X
Third reading bill X
Final version of bill x

House Committee on Business & Labor

Hearing date(s)* 3-24

Executive action (vote) date(s)* 3-24

Comm. Report 3-25

Floor 2nd reading & vote 4-3

Floor 3rd reading & vote 4-4

Senate Committee on Labor & Employer

Hearing date(s)* 2-18 2-20

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Comm. Report 2-21

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Conference or Free Conference Comm. _____ Yes X No

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Executive action (vote) date(s)* _____

* Includes minutes, exhibits, roll call, visitors register, and vote sheet if available.

Did this bill originate in an interim committee? _____ Yes X No

Committee _____ Report _____

NOTES: Revise Workers' Compensation Regulatory Functions of Dept. of Labor
& Industry



Compiled by: rg

Date: 3-24-2016

SB 348 INTRODUCED BY GLASER

LC0726 DRAFTER: MCCLURE

REQUIRE ONE-STOP LICENSING FOR BUSINESS AND PROFESSIONAL
LICENSES

2/13 INTRODUCED
2/13 FIRST READING
2/13 REFERRED TO BUSINESS & INDUSTRY
2/13 FISCAL NOTE REQUESTED
2/18 HEARING
2/19 TABLED IN COMMITTEE
2/20 FISCAL NOTE RECEIVED
2/20 FISCAL NOTE PRINTED
3/03 MISSED DEADLINE FOR 45TH DAY TRANSMITTAL
DIED IN COMMITTEE

SB 349 INTRODUCED BY KEATING, ET AL.

LC0746 DRAFTER: MCCLURE

REVISE THE WORKERS' COMPENSATION REGULATORY FUNCTIONS OF
THE DEPARTMENT OF LABOR AND INDUSTRY

2/13	INTRODUCED		
2/13	FIRST READING		
2/13	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
2/13	FISCAL NOTE REQUESTED		
2/18	HEARING		
2/18	FISCAL NOTE RECEIVED		
2/18	FISCAL NOTE PRINTED		
2/21	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/24	2ND READING PASSED	50	0
2/25	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
3/03	FIRST READING		
3/03	REFERRED TO BUSINESS & LABOR		
3/24	HEARING		
3/25	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/03	2ND READING CONCURRED	95	3
4/04	3RD READING CONCURRED	96	3
	RETURNED TO SENATE WITH AMENDMENTS		
4/08	2ND READING AMENDMENTS CONCURRED	50	0
4/09	3RD READING CONCURRED AS AMENDED	50	0
4/14	SIGNED BY PRESIDENT		
4/15	SIGNED BY SPEAKER		
4/15	TRANSMITTED TO GOVERNOR		
4/17	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 310		
	EFFECTIVE DATE: 07/01/97		

SB 350 INTRODUCED BY MCNUTT, ET AL.

LC1120 DRAFTER: LANE

REVISE THE LAWS RELATING TO THE COMMISSION FOR HUMAN RIGHTS

2/13	INTRODUCED		
2/13	FIRST READING		
2/13	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
2/13	FISCAL NOTE REQUESTED		
2/18	HEARING		
2/18	FISCAL NOTE RECEIVED		
2/18	FISCAL NOTE PRINTED		
2/21	COMMITTEE REPORT—BILL PASSED		
2/24	2ND READING PASSED	34	16
2/25	3RD READING PASSED	33	17

INTRODUCED BY Senate BILL NO. 349
Anthony Smith

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE WORKERS' COMPENSATION REGULATORY FUNCTIONS OF THE DEPARTMENT OF LABOR AND INDUSTRY; PERMITTING AN INSURER ACCESS TO THE WORKERS' COMPENSATION DATA BASE SYSTEM; ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF LABOR AND INDUSTRY DETERMINE WAGES PAID IN PROPERTY OTHER THAN MONEY; REQUIRING THAT THE INDEPENDENT CONTRACTOR EXEMPTION PROCESS BE SELF-FUNDING; ELIMINATING DEPARTMENT OF LABOR AND INDUSTRY CERTIFICATION OF TRADE GROUPS THAT WISH TO PURCHASE GROUP INSURANCE; ELIMINATING OBSOLETE REFERENCES TO THE ASSIGNED RISK POOL; CLARIFYING THE ADMINISTRATION OF THE UNINSURED EMPLOYERS' FUND; INCREASING THE PENALTY AGAINST UNINSURED EMPLOYERS; ELIMINATING THE UNDERINSURED EMPLOYERS' FUND; CLARIFYING THE PROCEDURES RELATING TO COMPROMISE SETTLEMENTS AND LUMP-SUM CONVERSIONS; CLARIFYING REHABILITATION PLAN AGREEMENTS; ELIMINATING MEDICAL ADVISORY COMMITTEES; ELIMINATING PLAN NO. 2 DEPOSIT REQUIREMENTS; PROVIDING FOR REFUND OF PLAN NO. 2 INSURER DEPOSITS AND THE TRANSFER OF SURPLUS FUNDS IN THE UNDERINSURED EMPLOYERS' FUND TO THE UNINSURED EMPLOYERS' FUND; AMENDING SECTIONS 20-15-403, 33-2-119, 39-71-225, 39-71-303, 39-71-401, 39-71-433, 39-71-503, 39-71-504, 39-71-704, 39-71-721, 39-71-741, AND 39-71-2314, MCA; REPEALING SECTIONS 39-71-431, 39-71-531, 39-71-532, 39-71-533, 39-71-534, 39-71-1013, 39-71-1109, AND 39-71-2206, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 20-15-403, MCA, is amended to read:

"20-15-403. Applications of other school district provisions. (1) When the term "school district" appears in the following sections outside of Title 20, the term includes community college districts and the provisions of those sections applicable to school districts apply to community college districts: 2-9-101, 2-9-111, 2-9-316, 2-16-114, 2-16-602, 2-16-614, 2-18-703, 7-3-1101, 7-6-2604, 7-6-2801, 7-7-123, 7-8-2214, 7-8-2216, 7-11-103, 7-12-4106, 7-13-110, 7-13-210, 7-15-4206, 10-1-703, 15-1-101,

1 15-6-204, 15-16-101, 15-16-605, 15-70-301, 17-5-101, 17-5-202, 17-6-103, 17-6-204, 17-6-213,
2 17-7-201, 18-1-201, 18-2-101, 18-2-103, 18-2-113, 18-2-114, 18-2-404, 18-2-432, 18-5-205, 19-1-102,
3 19-1-811, 22-1-309, 25-1-402, 27-18-406, 33-20-1104, 39-3-104, 39-4-107, 39-31-103, 39-31-304,
4 39-71-116, 39-71-117, 39-71-2106, ~~39-71-2206~~, 40-6-237, 41-3-1132, 49-3-101, 49-3-102, 53-20-304,
5 77-3-321, 82-10-201, 82-10-202, 82-10-203, 85-7-2158, and 90-6-208 and Rules 4D(2)(g) and 15(c),
6 M.R.Civ.P., as amended.

7 (2) When the term "school district" appears in a section outside of Title 20 but the section is not
8 listed in subsection (1), the school district provision does not apply to a community college district."
9

10 **Section 2.** Section 33-2-119, MCA, is amended to read:

11 **"33-2-119. Suspension or revocation for violations and special grounds.** (1) The commissioner
12 ~~may, in his discretion,~~ suspend or revoke an insurer's certificate of authority if, after a hearing ~~thereon~~, ~~he~~
13 the commissioner finds that the insurer has:

14 (a) violated any lawful order of the commissioner or any provision of this code other than those
15 for which suspension or revocation is mandatory;

16 (b) reinsured more than 90% of its risks resident, located, or to be performed in Montana, in
17 another insurer. In considering suspension or revocation, the commissioner shall consider all relevant
18 factors, including whether:

19 (i) after the reinsurance transaction all parties will be in compliance with Montana law; and

20 (ii) the transaction will substantially reduce protection and service to Montana policyholders;

21 ~~(c) failed to accept an equitable apportionment of assigned coverage as required by 39-71-431.~~

22 (2) The commissioner shall, after a hearing ~~thereon~~, suspend or revoke an insurer's certificate of
23 authority if ~~he~~ the commissioner finds that the insurer:

24 (a) is in unsound condition or in ~~such a~~ condition or using ~~such~~ methods or practices in the conduct
25 of its business ~~as to that~~ render its further transaction of insurance in Montana injurious or hazardous to
26 its policyholders or to the public;

27 (b) has refused to be examined or to produce its accounts, records, and files for examination or
28 if any of its officers have refused to give information with respect to its affairs, when required by the
29 commissioner;

30 (c) has failed to pay any final judgment rendered against it in Montana within 30 days after the

1 judgment became final;

2 (d) with such frequency as to indicate its general business practice in Montana, has without just
3 cause refused to pay a proper claim arising under its policies, whether the claim is in favor of an insured
4 or is in favor of a third person with respect to the liability of an insured to the third person, or without just
5 cause compels the insured or claimant to accept less than the amount due ~~him~~ the claimant or to employ
6 attorneys or to bring suit against the insurer or insured to secure full payment or settlement of the claims;

7 (e) is affiliated with and under the same general management or interlocking directorate or
8 ownership as another insurer ~~which~~ that transacts direct insurance in Montana without having a certificate
9 of authority ~~therefor~~, except as permitted as to a surplus lines insurer under part 3 of this chapter.

10 (3) The commissioner may, ~~in his discretion and~~ without advance notice or a hearing ~~thereon~~,
11 immediately suspend the certificate of authority of any insurer as to which proceedings for receivership,
12 conservatorship, rehabilitation, or other delinquency proceedings have been commenced in any state."

13
14 **Section 3.** Section 39-71-225, MCA, is amended to read:

15 **"39-71-225. Workers' compensation data base system.** (1) The department shall develop a
16 workers' compensation data base system to generate management information about Montana's workers'
17 compensation system. The data base system must be used to collect and compile information from insurers,
18 employers, medical providers, claimants, adjusters, rehabilitation providers, and the legal profession.

19 (2) Data collected must be used to provide:

20 (a) management information to the legislative and executive branches for the purpose of making
21 policy and management decisions, including but not limited to:

22 ~~(a)(i)~~ performance information to enable the state to enact remedial efforts to ensure quality,
23 control abuse, and enhance cost control;

24 ~~(b)(ii)~~ information on medical, indemnity, and rehabilitation costs, utilization, and trends; ~~and~~

25 ~~(c)(iii)~~ information on litigation and attorney involvement for the purpose of identifying trends,
26 problem areas, and the costs of legal involvement; and

27 (b) current and prior claim information to insurers, including insurers authorized to transact
28 insurance in other states, to determine claims liability and fraud investigation and prosecution.

29 ~~(2)(3)~~ The department is authorized to collect from insurers, employers, medical providers, the legal
30 profession, and others the information necessary to generate the workers' compensation data base system.

1 ~~(3)~~(4) The workers' compensation data base system must be designed in accordance with the
2 following principles:

3 (a) avoidance of duplication and inconsistency;
4 (b) reasonable availability of data elements;
5 (c) value of information collected to be commensurate with the cost of retrieving the collected
6 information;

7 (d) uniformity to permit efficiency of collection and to allow interstate comparisons;

8 (e) a workable mechanism to ensure the accuracy of the data collected and to protect the
9 confidentiality of collected data;

10 (f) reasonable availability of the data at a fair cost to the user;

11 (g) a broad application to plan No. 1, plan No. 2, and plan No. 3 insurers;

12 (h) compatibility with electronic data reporting;

13 (i) reporting procedures that can be handled through private data collection systems that adhere
14 to the provisions of subsections ~~(3)(a)~~ (4)(a) through ~~(3)(h)~~ (4)(h);

15 (j) implementation of reporting requirements that allow reasonable lead time for compliance.

16 ~~(4)(5) (a) The department shall take all steps necessary to have the workers' compensation data~~
17 ~~base system fully operational by July 1, 1995.~~

18 ~~(b) After the workers' compensation data base system is operational, the~~ The department shall
19 publish ~~an annual~~ a biennial report ~~and may publish quarterly reports~~ on the information compiled.

20 (6) Users of information obtained from the workers' compensation data base under this section are
21 liable for damages arising from misuse or unlawful dissemination of data base information."

22
23 Section 4. Section 39-71-303, MCA, is amended to read:

24 "39-71-303. Work paid for in property other than money ~~wages to be determined by~~
25 ~~department. Where any~~ When an employer procures any work to be done, payment for which is to be was
26 made in property other than money or its equivalent and the value of ~~which the~~ property is speculative or
27 intangible, the wages of the employees receiving ~~such the~~ compensation ~~shall be determined by the~~
28 ~~department in accordance with~~ must be the going wage for the same or similar work in the district or
29 locality where the ~~same is to be~~ work was performed."
30

Section 5. Section 39-71-401, MCA, is amended to read:

"39-71-401. Employments covered and employments exempted. (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to all employees, as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows an election, the Workers' Compensation Act does not apply to any of the following employments:

- (a) household and domestic employment;
- (b) casual employment as defined in 39-71-116;
- (c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;
- (d) employment of sole proprietors, working members of a partnership, or working members of a member-managed limited liability company, except as provided in subsection (3);
- (e) employment of a broker or ~~salesman~~ salesperson performing under a license issued by the board of realty regulation;
- (f) employment of a direct seller as defined in 26 U.S.C. 3508;
- (g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;
- (h) employment of a person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;
- (i) employment with a railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;
- (j) employment as an official, including a timer, referee, or judge, at a school amateur athletic event, unless the person is otherwise employed by a school district;
- (k) employment of a person performing services as a newspaper carrier or free-lance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are

1 not covered. As used in this subsection, "free-lance correspondent" is a person who submits articles or
2 photographs for publication and is paid by the article or by the photograph. As used in this subsection,
3 "newspaper carrier":

4 (i) is a person who provides a newspaper with the service of delivering newspapers singly or in
5 bundles; but

6 (ii) does not include an employee of the paper who, incidentally to the employee's main duties,
7 carries or delivers papers.

8 (l) cosmetologist's services and barber's services as defined in 39-51-204(1)(l);

9 (m) a person who is employed by an enrolled tribal member or an association, business,
10 corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose
11 business is conducted solely within the exterior boundaries of an Indian reservation;

12 (n) employment of a jockey performing under a license issued by the board of horseracing from the
13 time the jockey reports to the scale room prior to a race through the time the jockey is weighed out after
14 a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing,
15 that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;

16 (o) employment of an employer's spouse for whom an exemption based on marital status may be
17 claimed by the employer under 26 U.S.C. 7703;

18 (p) a person who performs services as a petroleum land professional. As used in this subsection,
19 a "petroleum land professional" is a person who:

20 (i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in
21 negotiating a business agreement for the exploration or development of minerals;

22 (ii) is paid for services that are directly related to the completion of a contracted specific task rather
23 than on an hourly wage basis; and

24 (iii) performs all services as an independent contractor pursuant to a written contract.

25 (q) an officer of a quasi-public or a private corporation or manager of a manager-managed limited
26 liability company who qualifies under one or more of the following provisions:

27 (i) the officer or manager is engaged in the ordinary duties of a worker for the corporation or the
28 limited liability company and does not receive any pay from the corporation or the limited liability company
29 for performance of the duties;

30 (ii) the officer or manager is engaged primarily in household employment for the corporation or the

1 limited liability company;

2 (iii) the officer or manager owns 20% or more of the number of shares of stock in the corporation
3 or owns 20% or more of the limited liability company; or

4 (iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law,
5 daughter-in-law, nephew, niece, brother, or sister of a corporate officer who owns 20% or more of the
6 number of shares of stock in the corporation or who owns 20% or more of the limited liability company.

7 (3) (a) A sole proprietor, a working member of a partnership, or a working member of a
8 member-managed limited liability company who represents to the public that the person is an independent
9 contractor shall elect to be bound personally and individually by the provisions of compensation plan No.
10 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

11 (b) The application must be made in accordance with the rules adopted by the department. ~~There~~
12 ~~is no~~ The fee for the initial application. Any subsequent application and any renewal must be accompanied
13 ~~by a \$25 application fee determined by the department in an amount that is sufficient to fully fund the cost~~
14 of administering the program. The application fee must be deposited in the administration fund established
15 in 39-71-201 ~~to offset the costs of administering the program.~~

16 (c) When an application is approved by the department, it is conclusive as to the status of an
17 independent contractor and precludes the applicant from obtaining benefits under this chapter.

18 (d) The exemption, if approved, remains in effect for 1 year following the date of the department's
19 approval. To maintain the independent contractor status, an independent contractor shall annually submit
20 a renewal application. A renewal application must be submitted for all independent contractor exemptions
21 approved as of July 1, 1995, or thereafter. The renewal application and the \$25 renewal application fee
22 must be received by the department at least 30 days prior to the anniversary date of the previously
23 approved exemption.

24 (e) A person who makes a false statement or misrepresentation concerning that person's status
25 as an exempt independent contractor is subject to a civil penalty of \$1,000. The department may impose
26 the penalty for each false statement or misrepresentation. The penalty must be paid to the uninsured
27 employers' fund. The lien provisions of 39-71-506 apply to the penalty imposed by this section.

28 (f) If the department denies the application for exemption, the applicant may contest the denial by
29 petitioning for review of the decision by an appeals referee in the manner provided for in 39-51-1109. An
30 applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance with

1 the procedure established in 39-51-2403 and 39-51-2404.

2 (4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its
3 employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private
4 corporation, or a manager-managed limited liability company may elect coverage for its corporate officers
5 or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following
6 manner:

7 (i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by
8 delivering the notice to the board of directors of the corporation or to the management organization of the
9 manager-managed limited liability company; or

10 (ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by
11 delivering the notice to the board of directors of the corporation or to the management organization of the
12 manager-managed limited liability company and to the insurer.

13 (b) If the employer changes plans or insurers, the employer's previous election is not effective and
14 the employer shall again serve notice to its insurer and to its board of directors or the management
15 organization of the manager-managed limited liability company if the employer elects to be bound.

16 (5) The appointment or election of an employee as an officer of a corporation, a partner in a
17 partnership, or a member in or a manager of a limited liability company for the purpose of exempting the
18 employee from coverage under this chapter does not entitle the officer, partner, member, or manager to
19 exemption from coverage.

20 (6) Each employer shall post a sign in the workplace at the locations where notices to employees
21 are normally posted, informing employees about the employer's current provision of workers' compensation
22 insurance. A workplace is any location where an employee performs any work-related act in the course of
23 employment, regardless of whether the location is temporary or permanent, and includes the place of
24 business or property of a third person while the employer has access to or control over the place of
25 business or property for the purpose of carrying on the employer's usual trade, business, or occupation.
26 The sign must be provided by the department, distributed through insurers or directly by the department,
27 and posted by employers in accordance with rules adopted by the department. An employer who purposely
28 or knowingly fails to post a sign as provided in this subsection is subject to a \$50 fine for each citation."

29

30 **Section 6.** Section 39-71-433, MCA, is amended to read:

1 "39-71-433. Group purchase of workers' compensation insurance. (1) ~~On receiving approval of~~
2 ~~the department, two~~ Two or more business entities may join together to form a group to purchase individual
3 workers' compensation insurance policies covering each member of the group.

4 ~~(2) To be eligible to join a new group that is forming, the department shall determine that a~~
5 ~~business entity is engaged in a business pursuit that is the same as or similar to the business pursuits of~~
6 ~~the other entities participating in the group.~~

7 ~~(3) The department shall establish a certification program for groups organized under this section~~
8 ~~and shall issue to eligible business entities certificates of approval that authorize formation and maintenance~~
9 ~~of a group.~~

10 ~~(4) The department by rule shall adopt forms, criteria, and procedures for the issuance of~~
11 ~~certificates of approval to groups under this section.~~

12 ~~(5) A group certified under this section may add additional members without approval from the~~
13 ~~department if the additional members meet the specific criteria identified in the original application and any~~
14 ~~modifications to the criteria, as approved by the department.~~

15 ~~(6)~~ (2) A group ~~certified~~ formed under this section may purchase individual workers' compensation
16 insurance policies covering each member of the group from any insurer authorized to write workers'
17 compensation insurance in this state, except that the state fund, as defined in 39-71-2312, has the right
18 to refuse coverage of a group and its plan of operation but ~~cannot~~ may not refuse coverage to an individual
19 employer. Under an individual policy, the group is entitled to a premium or volume discount that would be
20 applicable to a policy of the combined premium amount of the individual policies.

21 ~~(7)~~ (3) A group shall apportion any discount or policyholder dividend received on workers'
22 compensation insurance coverage among the members of the group according to a formula adopted in the
23 plan of operation for the group.

24 ~~(8)~~ (4) A group shall adopt a plan of operation that must include the composition and selection of
25 a governing board, the methods for administering the group, the eligibility requirements to join the group,
26 and guidelines for the workers' compensation insurance coverage obtained by the group, including the
27 payment of premiums, the distribution of discounts, and the method for providing risk management. A
28 group shall file a copy of its plan of operation with the department."

29
30 **Section 7.** Section 39-71-503, MCA, is amended to read:

1 **"39-71-503. Administration of fund -- appropriation.** (1) The department shall administer the fund
2 and shall pay from it all expenses of administering the fund, all loss adjustment expenses for claims of
3 injured employees of uninsured employers, and all proper benefits to injured employees of uninsured
4 employers.

5 (2) Surpluses and reserves may not be kept for the fund. The department shall make payments that
6 it considers appropriate as funds become available from time to time. The payment of weekly disability
7 benefits takes ~~preference~~ precedence over the payment of medical benefits. Lump-sum payments of future
8 projected benefits, including impairment awards, may not be made from the fund. The board of investments
9 shall invest the money of the fund, and the investment income must be deposited in the fund. ~~The cost of~~
10 ~~administration of the fund must be paid out of the money in the fund.~~

11 (3) The amounts necessary for the payment of benefits from this fund are statutorily appropriated,
12 as provided in 17-7-502, from this fund."

13
14 **Section 8.** Section 39-71-504, MCA, is amended to read:

15 **"39-71-504. Funding of fund -- option for agreement between department and injured employee.**
16 The fund is funded in the following manner:

17 (1) (a) The department may require that the uninsured employer pay to the fund a penalty of either
18 up to ~~double~~ treble the premium amount the employer would have paid on the payroll of the employer's
19 workers in this state if the employer had been enrolled with compensation plan No. 3 for the period of time
20 that the employer was uninsured or \$200 \$10,000, whichever is greater. ~~In determining the premium~~
21 ~~amount for the calculation of the penalty under this subsection, the department shall make an assessment~~
22 ~~on how much premium would have been paid on the employer's past 3 year payroll for periods within the~~
23 ~~3 years when the employer was uninsured.~~

24 (2)(b) The fund shall ~~receive~~ collect from an uninsured employer an amount equal to all benefits
25 paid or to be paid from the fund to an injured employee of the uninsured employer.

26 (3) ~~The department may determine that the \$1,000 assessments that are charged against an~~
27 ~~insurer in each case of an industrial death under 39-71-902(1) must be paid to the uninsured employers'~~
28 ~~fund rather than the subsequent injury fund.~~

29 (4)(2) The department may enter into an agreement with the injured employee or the employee's
30 beneficiaries to assign to the employee or the beneficiaries all or part of the funds ~~received~~ collected by the

1 department from the uninsured employer pursuant to subsection ~~(2)~~ (1)(b)."

2
3 **Section 9.** Section 39-71-704, MCA, is amended to read:

4 **"39-71-704. Payment of medical, hospital, and related services -- fee schedules and hospital rates**
5 **-- fee limitation.** (1) In addition to the compensation provided under this chapter and as an additional benefit
6 separate and apart from compensation benefits actually provided, the following must be furnished:

7 (a) After the happening of a compensable injury and subject to other provisions of this chapter, the
8 insurer shall furnish reasonable primary medical services for conditions resulting from the injury for those
9 periods as the nature of the injury or the process of recovery requires.

10 (b) The insurer shall furnish secondary medical services only upon a clear demonstration of
11 cost-effectiveness of the services in returning the injured worker to actual employment.

12 (c) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses,
13 prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in
14 39-71-119, arising out of and in the course of employment.

15 (d) The insurer shall reimburse a worker for reasonable travel expenses incurred in travel to a
16 medical provider for treatment of an injury only if the travel is incurred at the request of the insurer.
17 Reimbursement must be at the rates allowed for reimbursement of travel by state employees.

18 (e) Except for the repair or replacement of a prosthesis furnished as a result of an industrial injury,
19 the benefits provided for in this section terminate when they are not used for a period of 60 consecutive
20 months.

21 (f) Notwithstanding subsection (1)(a), the insurer may not be required to furnish, after the worker
22 has achieved medical stability, palliative or maintenance care except:

23 (i) when provided to a worker who has been determined to be permanently totally disabled and for
24 whom it is medically necessary to monitor administration of prescription medication to maintain the worker
25 in a medically stationary condition; or

26 (ii) when necessary to monitor the status of a prosthetic device.

27 (g) If the worker's treating physician believes that palliative or maintenance care that would
28 otherwise not be compensable under subsection (1)(f) is appropriate to enable the worker to continue
29 current employment or that there is a clear probability of returning the worker to employment, the treating
30 physician shall first request approval from the insurer for the treatment. If approval is not granted, the

1 treating physician may request approval from the department for the treatment. The department shall
2 appoint a panel of physicians, including at least one treating physician from the area of specialty in which
3 the injured worker is being treated, pursuant to rules that the department may adopt, to review the
4 proposed treatment and determine its appropriateness.

5 (h) Notwithstanding any other provisions of this chapter, the department, by rule and upon the
6 advice of the professional licensing boards of practitioners affected by the rule, may exclude from
7 compensability any medical treatment that the department finds to be unscientific, unproved, outmoded,
8 or experimental.

9 (2) The department shall annually establish a schedule of fees for medical nonhospital services
10 necessary for the treatment of injured workers. Charges submitted by providers must be the usual and
11 customary charges for nonworkers' compensation patients. The department may require insurers to submit
12 information to be used in establishing the schedule. ~~The department shall establish utilization and treatment~~
13 ~~standards for all medical services provided for under this chapter in consultation with the standing medical~~
14 ~~advisory committees provided for in 39-71-1109.~~

15 (3) The department shall establish rates for hospital services necessary for the treatment of injured
16 workers. Beginning January 1, 1995, the rates may be based on per diem or diagnostic-related groups. The
17 rates established by the department pursuant to this subsection may not be less than medicaid
18 reimbursement rates. Approved rates must be in effect for a period of 12 months from the date of approval.
19 The department may coordinate this ratesetting function with other public agencies that have similar
20 responsibilities. For services available in Montana, insurers are not required to pay facilities located outside
21 Montana rates that are greater than those allowed for services delivered in Montana.

22 (4) The percentage increase in medical costs payable under this chapter may not exceed the annual
23 percentage increase in the state's average weekly wage as defined in 39-71-116.

24 (5) Payment pursuant to reimbursement agreements between managed care organizations or
25 preferred provider organizations and insurers is not bound by the provisions of this section.

26 (6) Disputes between an insurer and a medical service provider regarding the amount of a fee for
27 medical services must be resolved by a hearing before the department upon written application of a party
28 to the dispute.

29 (7) (a) After the initial visit, the worker is responsible for 20%, but not to exceed \$10, of the cost
30 of each subsequent visit to a medical service provider for treatment relating to a compensable injury or

1 occupational disease, unless the visit is to a medical service provider in a managed care organization as
2 requested by the insurer or is a visit to a preferred provider as requested by the insurer.

3 (b) After the initial visit, the worker is responsible for \$25 of the cost of each subsequent visit to
4 a hospital emergency department for treatment relating to a compensable injury or occupational disease.

5 (c) "Visit", as used in subsections (7)(a) and (7)(b), means each time the worker obtains services
6 relating to a compensable injury or occupational disease from:

7 (i) a treating physician;

8 (ii) a physical therapist;

9 (iii) a psychologist; or

10 (iv) hospital outpatient services available in a nonhospital setting.

11 (d) A worker is not responsible for the cost of a subsequent visit pursuant to subsection (7)(a) if
12 the visit is an examination requested by an insurer pursuant to 39-71-605."

13
14 **Section 10.** Section 39-71-721, MCA, is amended to read:

15 **"39-71-721. Compensation for injury causing death -- limitation.** (1) (a) If an injured employee dies
16 and the injury was the proximate cause of the death, the beneficiary of the deceased is entitled to the same
17 compensation as though the death occurred immediately following the injury. A beneficiary's eligibility for
18 benefits commences after the date of death, and the benefit level is established as set forth in subsection
19 (2).

20 (b) The insurer is entitled to recover any overpayments or compensation paid in a lump sum to a
21 worker prior to death but not yet recouped. The insurer shall recover the payments from the beneficiary's
22 biweekly payments as provided in 39-71-741~~(5)~~(3).

23 (2) To beneficiaries as defined in 39-71-116(5)(a) through (5)(d), weekly compensation benefits
24 for an injury causing death are 66 2/3% of the decedent's wages. The maximum weekly compensation
25 benefit may not exceed the state's average weekly wage at the time of injury. The minimum weekly
26 compensation benefit is 50% of the state's average weekly wage, but in no event may it exceed the
27 decedent's actual wages at the time of death.

28 (3) To beneficiaries as defined in 39-71-116(5)(e) and (5)(f), weekly benefits must be paid to the
29 extent of the dependency at the time of the injury, subject to a maximum of 66 2/3% of the decedent's
30 wages. The maximum weekly compensation may not exceed the state's average weekly wage at the time

1 of injury.

2 (4) If the decedent leaves no beneficiary, a lump-sum payment of \$3,000 must be paid to the
3 decedent's surviving parent or parents.

4 (5) If any beneficiary of a deceased employee dies, the right of the beneficiary to compensation
5 under this chapter ceases. Death benefits must be paid to a surviving spouse for 500 weeks subsequent
6 to the date of the deceased employee's death or until the spouse's remarriage, whichever occurs first. After
7 benefit payments cease to a surviving spouse, death benefits must be paid to beneficiaries, if any, as
8 defined in 39-71-116(5)(b) through (5)(d).

9 (6) In all cases, benefits must be paid to beneficiaries.

10 (7) Benefits paid under this section may not be adjusted for cost of living as provided in
11 39-71-702."

12

13 **Section 11.** Section 39-71-741, MCA, is amended to read:

14 **"39-71-741. Compromise settlements and lump-sum payments.** (1) By written agreement filed
15 with the department, benefits under this chapter may be converted in whole or in part into a lump sum.
16 An agreement is subject to department approval. If the department fails to approve the agreement in
17 writing within 14 days of the filing with the department, the agreement is approved. The department shall
18 directly notify a claimant of a department order approving or disapproving a claimant's compromise or
19 lump-sum payment. Upon approval, the agreement constitutes a compromise and release settlement and
20 may not be reopened by the department. The department may approve an agreement to convert the
21 following benefits to a lump sum only under the following conditions:

22 ~~(a) Benefits under this chapter may be converted in whole or in part to a lump sum:~~

23 ~~(i) all benefits if a claimant and an insurer dispute the initial compensability of an injury; and~~

24 ~~(ii) if the claimant and insurer agree to a settlement.~~

25 ~~(b) The agreement is subject to department approval. The department may disapprove an~~
26 ~~agreement under this section only if there is not a~~ there is a ~~reasonable dispute over compensability;~~

27 ~~(c) Upon approval, the agreement constitutes a compromise and release settlement and may not~~
28 ~~be reopened by the department.~~

29 ~~(2) (a)(b) Permanent~~ permanent ~~partial disability benefits may be converted in whole or in part to~~
30 ~~a lump sum payment if:~~

1 ~~(i)~~ if an insurer has accepted initial liability for an injury; ~~and~~

2 ~~(ii) the claimant and the insurer agree to a lump-sum conversion.~~

3 ~~(b)~~ The total of any permanent partial lump-sum conversion in part that is awarded to a claimant
4 prior to the claimant's final award may not exceed the anticipated award under 39-71-703.

5 ~~(c) An agreement is subject to department approval.~~ The department may disapprove an agreement
6 under this subsection (1)(b) only if the department determines that the lump-sum conversion amount is
7 inadequate. ~~If disapproved, the department shall set forth in detail the reasons for disapproval.~~

8 ~~(d) Upon approval, a compromise and release settlement may not be reopened by the department.~~

9 ~~(3)(c)~~ Permanent permanent total disability benefits ~~may be converted in whole or in part to a lump~~
10 ~~sum. The if the~~ total of all lump-sum conversions in part that are awarded to a claimant ~~may do~~ not exceed
11 \$20,000. ~~A conversion may be made only upon the written application of the injured worker with the~~
12 ~~concurrence of the insurer. Approval of the lump-sum payment rests in the discretion of the department.~~
13 The approval or award of a lump-sum permanent total disability payment in whole or in part by the
14 department or court must be the exception. It may be given only if the worker has demonstrated financial
15 need that:

16 ~~(a)(i)~~ relates to:

17 ~~(A)~~ the necessities of life;

18 ~~(B)~~ an accumulation of debt incurred prior to the injury; or

19 ~~(C)~~ a self-employment venture that is considered feasible under criteria set forth by the
20 department; or

21 ~~(b)(ii)~~ arises subsequent to the date of injury or arises because of reduced income as a result of
22 the injury.

23 ~~(4)(2)~~ Any lump-sum conversion of benefits under this section must be converted to present value
24 using the rate prescribed under subsection ~~(5)(b)~~ (3)(b).

25 ~~(5)(3)~~ (a) An insurer may recoup any lump-sum payment amortized at the rate established by the
26 department, prorated biweekly over the projected duration of the compensation period.

27 (b) The rate adopted by the department must be based on the average rate for United States
28 10-year treasury bills in the previous calendar year.

29 (c) If the projected compensation period is the claimant's lifetime, the life expectancy must be
30 determined by using the most recent table of life expectancy as published by the United States national

1 center for health statistics.

2 ~~(6) Subject to the other provisions of this section, the department shall approve or deny in writing~~
3 ~~compromise settlements and lump sum payments agreed to by workers and insurers. The department shall~~
4 ~~directly notify a claimant of a department order approving or denying a claimant's compromise or lump sum~~
5 ~~payment.~~

6 ~~(7)(4)~~ A dispute between a claimant and an insurer regarding the conversion of biweekly payments
7 into a lump-sum is considered a dispute, for which a mediator and the workers' compensation court have
8 jurisdiction to make a determination. If an insurer and a claimant agree to a compromise and release
9 settlement or a lump-sum payment but the department disapproves the agreement, the parties may request
10 the workers' compensation court to review the department's decision."
11

12 **Section 12.** Section 39-71-2314, MCA, is amended to read:

13 **"39-71-2314. State fund —assigned risk plan subject to laws applying to state agencies.** ~~(1) If~~
14 ~~an assigned risk plan is established and administered pursuant to 39-71-431, the state fund is subject to~~
15 ~~the premium tax liability for insurers as provided in 33-2-705 based on earned premium and paid on revenue~~
16 ~~from the previous fiscal year.~~

17 ~~(2)~~ The state fund is subject to laws that generally apply to state agencies, including but not limited
18 to Title 2, chapters 2, 3, 4 (only as provided in 39-71-2316), and 6, and Title 5, chapter 13. The state fund
19 is not exempt from a law that applies to state agencies unless that law specifically exempts the state fund
20 by name and clearly states that it is exempt from that law."
21

22 **NEW SECTION. Section 13. Transfer of deposits and surplus funds.** (1) All deposits held in trust
23 by the department of labor and industry pursuant to 39-71-2206 must be returned to the insurer who made
24 the deposit on or before December 31, 1997.

25 (2) Any surplus funds remaining in the underinsured employers' fund on [the effective date of this
26 act] must be deposited in the uninsured employers' fund provided for in 39-71-502.
27

28 **NEW SECTION. Section 14. Repealer.** Sections 39-71-431, 39-71-531, 39-71-532, 39-71-533,
29 39-71-534, 39-71-1013, 39-71-1109, and 39-71-2206, MCA, are repealed.
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NEW SECTION. **Section 15. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 16. Effective date.** [This act] is effective July 1, 1997.

-END-

19

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0349, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act revising workers' compensation regulatory functions of the Department of Labor and Industry; permitting an insurer access to the workers' compensation database system; eliminating the requirement that the Department of Labor and Industry determine wages paid in property other than money; requiring that the independent contractor exemption process be self-funding; eliminating the Department of Labor and Industry certification of trade groups that wish to purchase group insurance; eliminating obsolete references to the assigned risk pool; clarifying the administration of the uninsured employers' fund; increasing the penalty against uninsured employers; eliminating the underinsured employer's fund; clarifying the procedures relating to compromise settlements and lump-sum conversions; clarifying rehabilitation plan agreements; eliminating medical advisory committees; eliminating plan 2 deposit requirements; providing for refund of plan 2 insurer deposits and the transfer of surplus funds in the underinsured employers' fund to the uninsured employers' fund.

ASSUMPTIONS:

State Fund:

1. The workers' compensation database system at the Department of Labor and Industry (DLI) would enable insurers to receive current and prior years claim information on a claimant. This would assist the insurer in determining compensability and assist with the detection and prevention of fraud. This information would be provided to insurers, including those licensed to transact insurance in other states. There is a potential fiscal impact to the State Fund to access this information electronically. The access costs are currently unknown.
2. The proposed legislation changes the reporting on the information compiled from annual to biennial, which would have no fiscal impact to the State Fund.
3. There is potential for fiscal impact if the information obtained from the workers' compensation database system is misused. The State Fund would not misuse or unlawfully disseminate database information. Therefore, no fiscal impact to the State Fund.
4. The DLI would no longer be required, under 39-71-303, MCA, to determine wages equivalence in property. All disputes regarding wage equivalence would be directed to dispute resolution as provided for under the Workers' Compensation Act.
5. The fee for Workers' Compensation Act exemptions applied for through the DLI would no longer be established statutorily at \$25. The fee for application and renewal would be determined by the DLI. The fee would be established at a level sufficient to fully fund the cost of administering the program. Insurers would not be charged, through the administrative assessment, to pay for costs associated with exempting independent contractors which are not covered by the application fees. This would not have a fiscal impact on the State Fund. In fiscal 1997 the State Fund was not charged under the administrative assessment for costs associated with the exemptions. In fiscal 1996 the State Fund was assessed \$64,850 for this purpose.
6. Under the proposed legislation the DLI would no longer certify groups. The fiscal 1997 administrative assessment charged the State Fund \$1,193 for this purpose.
7. The State Fund maintains the right to refuse coverage of a group but may not refuse coverage to an individual employer.
8. There would be no fiscal impact to the State Fund as a result of the changes to the uninsured employers language in Section 8 of the proposed legislation. The State Fund was not assessed for this in fiscal 1997 but was assessed \$44,149 for this purpose in fiscal 1996.

(Continued)

Dave Lewis 2-18-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Thomas Keating 2/18/97
THOMAS KEATING, PRIMARY SPONSOR DATE
Fiscal Note for SB0349, as introduced

SB 349

9. The proposed legislation eliminates the medical advisory committee which assists the DLI in determining standards for medical services providers. The State Fund was charged \$59,981 in the fiscal 1997 administrative assessment for medical regulation. The cost associated with the committee and establishing the standards are potential future savings; however, the fiscal impact is unknown.
10. Under the proposed legislation the DLI would have 14 days to disapprove compromise settlements and lump-sum settlements. If the DLI does not disapprove the compromise settlement or lump-sum settlement within 14 days the compromise settlement or lump-sum settlement is considered approved. There is potential for savings to State Fund benefit payments; however, the fiscal impact is unknown.

Department of Labor and Industry:

11. SB 349 changes the penalties that the Department of Labor and Industry may assess for uninsured employers' fund (UEF).
12. Additional staff time would be required to educate the public on the changes. Pamphlets and other forms of public information would be re-written to explain the changes. 2,500 copies of the pamphlets would be required for current level uninsured employers (2,500 x .035/pamphlet = \$88), plus postage and handling costs (2,500 x \$0.45 = \$1,125). In addition 15,000 pamphlets would be printed for use in Small Business Clinics and to respond to public requests (15,000 x .035/pamphlet = \$525). (\$88 + \$1,125 + \$525 = \$1,738).
13. Repeal of 39-71-2206, 39-71-433 and 39-71-704, MCA, eliminates a 0.80 grade 14 FTE (\$25,550 in fiscal 1998), and a 1.00 FTE (\$31,947 in fiscal 1999). Per diem reduction of \$1,200 in each year and operating costs reduction of \$11,072 in fiscal 1998 and \$18,524 in fiscal 1999.
14. The proposed legislation enables the Independent Contractor (IC) program to charge an amount sufficient to fully fund the cost to administer the program.
15. The full impact of the scope of the amendments to Section 3 (page 3, lines 27-28) is unclear. DLI interpretation is that the department would require the ability to contract for programming and database maintenance and a server expansion for a dial-in data access option. One contracted programmer would be needed for five months (867 hours) at \$43.87 per hour for front-end programming (\$38,035), and a second contracted programmer would be needed for five months at \$64.78 per hour for back-end programming (\$56,164). Contracted services for ongoing maintenance would cost \$16,843 for the balance of fiscal 1998 (260 hours x \$64.78 per hour) and \$33,686 in fiscal 1999 and thereafter. An additional file server would be needed at a cost of \$100,000, and a 0.25 FTE network administrator to keep the new server available for data searches by insurers, at a cost of \$8,694 for salary and benefits, and \$2,945 for operating expenses.

FISCAL IMPACT:**State Fund:**

There is potential for savings to the State Fund as a result of the proposed legislation; however, the fiscal impact cannot be determined.

Department of Labor and Industry:

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
<u>Expenditures:</u>		
FTE	(0.55)	(0.75)
Personal Services	(16,856)	(23,253)
Per diem	(1,200)	(1,200)
Operating Expenses	104,653	18,107
Equipment	<u>100,000</u>	<u>0</u>
Total	186,597	(6,346)
<u>Funding:</u>		
UEF (06055)	1,474	0
WC (02455)	<u>185,123</u>	<u>(6,346)</u>
Total	186,597	(6,346)
<u>Revenues:</u>		
WC (02455)	218,545	10,497

(Continued)

21

TECHNICAL NOTES:

1. SB 41 impacts the under-insured employers as does this proposed legislation.
2. Section 5(3)(b) requires the DLI to set the fees at the amount sufficient to fully fund the costs of administering the program. However, Section 5(3)(d) sets the renewal application rate at \$25.
3. Imposing a 14-day time limit on the settlement process (section 11(1)) ignores common problems in mailing and other processing.

SENATE LABOR & EMPLOYMENT RELATIONS

Page 3

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE - REREFERRED - DATE READ

SB0233	DEPRATU, BOB	1/27	2/06	REVISE UNEMPLOYMENT INSURANCE BENEFITS TO NONPROFESSIONAL SCHOOL EMPLOYEES	PASS AS AMENDED	2/11	VOTE: 9-0	2/13
SB0251	STANG, BARRY	1/30	2/06	CLARIFYING WC COVERAGE FOR STUDENTS IN WORK-BASED LEARNING ACTIVITIES	PASS AS AMENDED	2/11	VOTE: 9-0	2/13
SB0290	KEATING, THOMAS	2/06	2/18	REVISE WORKERS' COMPENSATION ADMINISTRATIVE FUND	PASS AS AMENDED	2/20	VOTE: 9-0	2/21
SB0302	KEATING, THOMAS	2/07	2/13	ESTABLISHING THE WORKER'S FREEDOM ACT	TABLED ON	2/15	VOTE: 5-4	
SB0304	COLE, MACK	2/07	2/15	MODIFY EXEMPTION FOR AN OFFICER OR MANAGER OF CORP. BASED ON STOCK OWNED	PASS AS AMENDED	2/15	VOTE: 9-0	2/18
SB0307	CRISMORE, WILLIAM	2/07	2/15	REVISE INDEPENDENT CONTRACTOR LAWS	NO ACTION TAKEN		VOTE:	
SB0325	CRISMORE, WILLIAM	2/11	2/18	ALLOW NONCOAL MINE INSPECTIONS BY FED ONLY EXCEPT FOR SAND/GRAVEL OPERATIONS	DO PASS	2/20	VOTE: 9-0	2/21
SB0349	KEATING, THOMAS	2/13	2/18	REVISE WORKERS' COMPENSATION REGULATORY FUNCTIONS OF DEPARTMENT OF LABOR	PASS AS AMENDED	2/20	VOTE: 9-0	2/21
SB0350	MCNUTT, WALTER	2/13	2/18	GENERALLY REVISE LAWS RELATING TO THE COMMISSION FOR HUMAN RIGHTS	DO PASS	2/20	VOTE: 6-3	2/21
SB0353	GAGE, DELWYN	2/14	2/18	AUTHORIZE STATE AGENCY TO ELECT WC COVERAGE UNDER PLAN 1, PLAN 2, OR PLAN 3	TABLED ON	2/20	VOTE: 9-0	
SB0364	BARTLETT, SUE	2/14	2/20	ESTABLISHING THE LIVEABLE WAGE FOR FAMILIES ACT	TABLED ON	2/20	VOTE: 5-3	
SB0375	THOMAS, FRED	2/17	2/20	REVISE ASSESSMENT PROCEDURES FOR THE WORK COMP SUBSEQUENT INJURY FUND	PASS AS AMENDED	2/20	VOTE: 9-0	2/21

23

MINUTES

**MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By **CHAIRMAN THOMAS F. KEATING**, on February 18, 1997, at 3:17 p.m., in Room 325.

ROLL CALL

Members Present:

Sen. Thomas F. Keating, Chairman (R)
Sen. James H. "Jim" Burnett, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Benedict (R)
Sen. C.A. Casey Emerson (R)
Sen. Debbie Bowman Shea (D)
Sen. Fred Thomas (R)
Sen. Bill Wilson (D)

Members Excused: Sen. Dale Mahlum (R)

Members Absent: None.

Staff Present: Eddy McClure, Legislative Services Division
Gilda Clancy, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 325, SB 290, SB 349,
SB 350, SB 353; 2/14/97
Executive Action: None.

HEARING ON SB 353

Sponsor: SENATOR DEL GAGE, SD 43, Cut Bank

Proponents: None.

Opponents: None.

Opening Statement by Sponsor:

SEN. DEL GAGE, SD 43, Cut Bank, is asking the Committee to just table this bill. He would like to make some comments so it is on the record for future sessions and future generations to take a look at.

(NOTE: SEN. KEATING SPONSORED THE NEXT TWO BILLS, VICE CHAIRMAN, JIM BURNETT TOOK THE CHAIR.)

{Tape: 1; Side: B; Approx. Time Count: 3:53 p.m.}

HEARING ON SB 325 349

Sponsor: SENATOR THOMAS F. KEATING, SD 5, Billings

Proponents: Jacqueline Lenmark, American Insurance Association, (AIA)
Bob Worthington, Montana Municipal Insurance Authority
George Wood, Montana Self-Insurers' Association
Mark Barry, State Fund
Jerry Driscoll, Montana Trades Council
Jim Hill, Employment Relations Division
Jack Holstrom, Montana Association of Counties

Opponents: None.

Informational Testimony: Don Judge, AFL/CIO

Opening Statement by Sponsor:

SEN. TOM KEATING, SD 5, Billings, said SB 349 makes some changes in the Department of Labor with regards to the regulatory functions of the Employment Relations Division. There was an advisory task force in 1949 which made a number of recommendations for all three Workers' Compensation Plans I, II, and III dealing with the regulatory functions and the assessments that funds the Department.

In SB 349 the Department has been involved in litigation over the assessment and as a result of the study, insurers have made a number of suggestions regarding the issues in the Department. Some of the recommendations require no legislation but there are some recommendations from that task force which do require legislation and they are embodied in SB 349.

First of all, they will deal with efficient regulation of the benefit system. The group has discovered some obsolete statutes and functions and have recommended repeal. Within the bill there will be the establishment of access to the Workers' Compensation data base which is in the Department by the insurers in the private sector.

Secondly, the Department will no longer have to make a determination on the wages not paid in money. That along with other disputed functions will be handled by the insurer. The independent contractor exemption should be a self-funding program which will be addressed in this legislation. The number of trade groups have joined together for group Workers' Compensation and the group was required to be certified by the Department but

under this bill, the insurer that is taking the risk of the trade group will determine whether the group was appropriately formed.

There will be an increase in penalties and damages for the uninsured employer. Those who decide to go bare will have to suffer the penalties. The underinsured employers statutes are being repealed and the utilization and treatment standards and medical advisory committees statutes are to be repealed in this legislation. We are reducing the amount of unnecessary work in the Department and putting responsibility where it belongs and hopefully streamlining the system and still protecting the employer and employee under the Workers' Compensation System.

Proponents' Testimony:

Jacqueline Lenmark, American Insurance Association, (AIA), which is a trade association comprising of around 250 property and casualty insurers. This bill is the product of several years collaborative study and work. It comes as a consensus bill and **Ms. Lenmark** briefly spoke of the history which has gone into this particular piece of legislation.

In June of 1994, the Department of Labor, in response to concerns which had been expressed over the administrative assessment that funds the Department's regulatory functions pull together a task force of all insurers who pay that assessment and Department staff to look at functions and the assessment, to do a wholesale review of that process.

As a result of that process, there were recommendations made to the Department. She submitted a copy of the report that was finalized as a result of that study to the Committee. **(EXHIBIT 3)** As a result of that process they bring two companion bills, so much of the testimony presented on this bill also applies to the bill that follows.

This is a lengthy itemization of various functions and **Ms. Lenmark** wanted the Committee to be reassured that each will not testify on the final bill and they have divided the bill up so they are not redundant in their speech. Each of the functions which is represented in this legislation has some dollar price tag attached to it. Some cost savings that will accrue to the benefit of the state and to the insurers that are funding this Department.

The sections of the bill that apply to the assigned risk statutes are repealed in this bill and also repeals the statutes that provided premium tax against the State Fund. The effective date of those statutes terminated in 1990 and those amendments simply remove those obsolete provisions from the code. In fact, one of those sections was addressed in the Code Commissioner's Bill this session, although not as effectively as here.

The Workers' Compensation Act provides that groups of employers who wish to band together to form a trade group can collectively purchase Workers' Compensation Insurance. That is in Section 6 of the bill. When enacted, that statute required the Department to certify what sort of group of employers might join together. Insurers felt they could better determine the appropriateness of the risk they would insure and felt that should be a matter between the employers, the insured and the insurer.

In this legislation they have eliminated the Department review of those groups. In the repealer there is a section which repeals one portion of the Workers' Compensation Act. This makes no change to the law, it simply eliminates one section of code that was reproduced elsewhere in the act.

Finally, the Montana Workers' Compensation Act currently requires Workers' Compensation Insurers to make a type of security deposit with the Department of Labor. That particular section of code was enacted before there was an Insurance Commissioner and before there was a Property and Casualty Guarantee Fund.

The purpose of the security deposit was to ensure there would be sufficient funds on hand to pay benefits to injured workers if a company were to be insolvent. Under current law those deposits are simply turned over to the Property and Casualty Guarantee Fund if there is an insolvent company. It is a redundant deposit and the Guarantee Fund fully secures and guarantees all benefits to injured workers of an insolvent company and they felt it more efficient to have the insurance commissioner regulate those security deposits and those companies through the insurance codes.

Bob Worthington, Programs Administrator, Montana Municipal Insurance Authority, (MMIA), which is a Plan I self-insurer organization that insures cities and towns across the State of Montana. He was a member of the committee that **Jacqueline Lenmark** spoke of in her testimony. They worked approximately two and one-half years and this process is the culmination of that. Sections 7 and 8 beginning on page 10 deal with the Uninsured Employer's Fund.

He said it is the belief of that committee that the Uninsured Employer's Fund certainly should be a stand-alone operation and Section 7 of the bill amends 39-71-503 and states that all expenses needed to administer the Uninsured Employer's Fund including administrative costs and claim adjustment cost be borne by that operation. The Department has done that to this date. In the last year, however, that was not true in prior cases and they would like to make sure that is part of statute. Section 8 also addresses Uninsured Employer's Fund in that a penalty is assessed for uninsured employers. The penalty has been changed from double the amount the employer would have paid in premium on payroll to treble, or for those who have violated the uninsured

employer's obligation a penalty of \$10,000 is assessed, whichever is greater.

Mr. Worthington said opponents will probably speak relative to the \$10,000. There is nothing sacred about that number, although he requested the committee's consideration of a substantial amount. They feel strongly the penalty needs to be large enough to deter any individual who is attempted to run his business as an uninsured employer. The minimal dollar amount now is of some benefit to people to stay as an uninsured employer until they are caught, pay the penalty and then move forward. Section 9, at the top of page 11, line 3 relieves the Department of the need to establish utilization and treatment standards.

His committee has spent a substantial amount of time looking at this issue. They feel that the development of utilization and treatment standards establishes some unnecessary thresholds for treatments and because there is such a variance in the types and degrees of injuries, they have some substantial concern about the time necessary to develop treatment standards which may not be needed in the medical community. Section 10 beginning on page 13, line 14 amends the statutes which deal with compromise settlements and lump sum payments.

Under this statute the Department must approve all compromise settlements or lump sum distributions. They strongly believe where there is an agreement by the claimant and the insurer that process go forward and not necessarily approved by the Department, therefore, the language contained in Section 11 changes that participation by the Department to the point where they would have 14 days to act on or disapprove compromise settlements or lump sum payments. If the Department does not act in 14 days, those agreements would be deemed to be approved.

They are trying to address the efficiency in that process and there are others who will address the language in the bill. Representing the cities and towns across the state, they request a do-pass on SB 349.

George Wood, Executive Secretary, Montana Self-Insurers' Association, supported this legislation. There is another bill in the committee which eliminates the requirement that the Department determine the value of property, other than money, as wages and provide that the wages will be determined to be the going amount of the area in which the work is performed. It will not need Department action to determine what the wages were. For example, if a house was given on a farm or a side of beef once a year to a hired man.

The other section **Mr. Wood** discussed is the fee for the exemption under the act. The present Workers' Compensation Act states that if you claim to be an independent contractor, you must have Workers' Compensation coverage or an exemption under the act. The fee in the statute is \$25 and they propose that be changed

and allow the fee to be determined by the Department in an amount sufficient to process the applications. Putting a dollar amount in there does not take care of the changes in the expenses incurred by the Department in taking care of the applications. The law states that the exemption is good for one year and would be filed annually. They propose the Department set the fee for that application. They ask for a do-pass on this bill.

Mark Barry, State Fund, said they insure approximately \$25,000 employers in the state. Over 50% of their employers pay less than \$1,000 in premium per year. The Department of Labor and Industry assessment is a cost of the State Fund and they were involved in the process to look at the cost they have been assessed.

They do support the regulatory function and do support a form of regulation of the system. However, they are supportive of an efficient regulation. Section 3 of SB 349 addresses the Workers' Compensation data base system which was established during the 1993 legislative session.

The changes in this bill will assist insurers in cost containment efforts. The insurers will be allowed to obtain information on prior claims filed by injured workers that are reported to insurers. This allows the insurers to determine compensability of the claim or whether it is an aggravation of a previously reported claim to the same part of body. The access will also allow insurers to investigate potential fraudulent claims.

The bill allows insurers from other states will be able to get information on potentially fraudulent claims filed in Montana. This will act as a preventive measure against those few people who move from state to state filing fraudulent claims. In addition, part 6 of Section 3 of the bill makes the party or the insurer who receives any information from the data base liable for damages if the information is misused for any reason at all.

The Department has concerns about what type of information that insurers should have access to and they can surely understand that concern and will work with the Department on what information should be made available to insurers.

Also, current law requires the Department to publish a report from the information pile from the data base each year. This bill changes that requirement to a bi-annual report. They feel this will allow the Department to prepare a more comprehensive report of what is happening with the Workers' Compensation system in Montana. This report can be published prior to the legislative session and provide it to the Governor. Section 6 of the bill eliminates the Department's role in approving groups from joining together to obtain group Workers' Compensation insurance.

The State Fund has established several group programs which have been very successful and the Department is currently working with other groups to establish additional insurance programs. They feel this bill will allow them to move forward in establishing those relationships.

Finally, they would like to mention this bill eliminates the Underinsured Employer's Fund. This provision was presented in the form of SB 41 sponsored by **SEN. STEVE BENEDICT**. It is also addressed in this bill. **(EXHIBIT 4)** is the Department of Labor's functions of which insurers are assessed for fiscal year 1996 and their budget for fiscal year 1997. They support SB 349.

Jerry Driscoll, Montana Building Trades Council, said Section 11, page 14 of this bill allows the Department of Labor 14 days to approve a lump sum settlement which is in writing between the insurer and the injured worker. Presently, there is no time limit so injured workers may have to wait weeks to get the approval from the Department on something they've already agreed to with the insurer. They hope this section is adopted so there will be time limits so that the injured worker and insurance company come to a settlement and do not have to wait weeks.

Jim Hill, Bureau Chief, Employment Relations Division, was present in place of **Chuck Hunter**. They are in support of this bill, although without the same enthusiasm as the previous speakers. They have several concerns and intend to draft several amendments to the bill for consideration.

Section 3, page 3, line 27 gives them concern with what information should be shared from the data base. They believe in several cases, the information in the data base should remain confidential in nature. They would like specific direction on what information should be provided.

Page 4, line 19 they believe regarding the report should be restored to its original language and the report should be produced annually. It wouldn't cost that much more to produce the report on an annual basis. **REP. CHASE HIBBARD** who originally sponsored the legislation requiring the report would like to go on record as supporting an annual report.

They think page 4, Section 4 is redundant. The change is already in SB 41 which has passed the Senate and is on its way to the House.

Section 5, page 7, line 11 they are in agreement with. Additionally, there are three or four bills which deal with the independent contractor program. They feel it is important that all of these bills be coordinated so that we end up with one final product.

They concur with the change in Section 6, page 8 and 9.

In Section 8, page 10, line 20, the \$10,000 figure referred to is much too high. The Department deals with many employers who have minor penalties and they feel this would be a major problem or burden to the small employers in the State of Montana who maybe have made a small mistake and should pay a penalty. They feel this is cost prohibitive and could result in a substantial hardship to the small employers in the State of Montana. Also, the language which indicates we should go back three years on the employer payroll is stricken from the bill. They would like to see that language restored. They need some kind of a basis to work with, and without clear direction they would have trouble determining how far back into the payroll records to go.

On page 10, line 27 in the same section they would like to retain the ability to put the \$1,000 assessment in the Uninsured Employer's Fund. They have the ability to assess insurers for funds for the Subsequent Injury Fund. They use this money to pay benefits and therefore, believe this money should go into the Uninsured Employer's Fund.

Section 9, page 12 deletes the utilization and treatment standards and they concur with this change.

Section 11, page 14 changes the way they may approve settlements and lump sum payments. The second sentence on line 16 currently reads that if the Department fails to approve the agreement in writing, within 14 days the agreement is approved. They think the language should be changed to read that if the Department fails to disapprove the agreement in writing within 14 days, the agreement is approved. That is a minor language change. Also, this section does not give the Department much latitude for problems beyond their control. For example, if something is lost in the mail or if the Department does not receive enough information with which to make a decision, the agreement would be approved without their concurrence and they think the 14 day limit is pretty restrictive.

Section 11, page 14, line 22 through the end of the section is very difficult to read. It is confusing in terms of the purpose of this section. They propose the insurers put together a grey bill on that section so that the Committee has a chance to see how this section would read.

Section 14, page 16 on repealing the Uninsured Employer's Fund is redundant. That action was taken in SB 41 which is in the House.

Jack Holstrom, Montana Association of Counties, has also been heavily involved in the collaborative effort to create this particular piece of legislation. They urge a do-pass.

Opponents' Testimony: None.

Informational Testimony:

Don Judge, Montana State AFL/CIO, said they do not have great concerns about the content of this legislation but they do have concerns about page 3, Section 3, the new language on lines 27 and 28.

Mr. Judge has recently met with counterparts from other states and they have found that access to this data by insurers or employers can lead to concerns of black listing for employees who have had accidents on the job and whose injury accident claims may follow them from one job to another. That is particularly true and can be of concern in their building trades because this allows for insurers who insure also out-of-state to carry that same information out-of-state where there are no laws prohibiting the use of that data.

He said he understands there is new language on page 4 which states that if you find that users of that information obtained by the Workers' Compensation data base under this section are liable from damages arising from the misuse or unlawful dissemination of data base information. It is very difficult to prove that you didn't get a job because the insurer knows that you had an accident somewhere else or that you have a potential re-injury situation. He doesn't see the protections they hoped would be in this legislation to prevent the possibility of black listing. They would prefer that information in terms of and addresses of injured workers not be provided to the insurers. If they want to use it for rate-basing purposes or something else, what they get is the kinds of injuries and the kinds of occupations but not specific information regarding individuals who are injured on the job.

Questions From Committee Members and Responses:

SEN. STEVE BENEDICT asked George Wood to turn to page 10, beginning with line 17 what his rationale is regarding going from double to treble and from \$200 to \$10,000.

Mr. Wood said he thinks it is a figure to get someone's attention, he said he believes the triple costs are fine. This is to discourage people from avoiding the Workers' Compensation Act. The \$10,000 becomes academic, and the \$200 is because you usually cannot collect the penalty.

SEN. BENEDICT said the way he reads this bill is that this is basically an attempt by the insurers to get themselves out from having to fund the Uninsured Employer's Fund by making it so difficult to be uninsured that there isn't a need for assessments.

{Tape: 2; Side: A; Approx. Time Count: 4:28 p.m.}

SEN. BENEDICT said he understands what **Mr. Wood** is thinking in people who knowingly and willfully try to avoid Workers' Compensation premiums. He asked what he thought this bill would do in the situation that an out-of-state employer buys a Montana business and this is the only business of its kind that they are in.

They hire a manager to manage the business and this manager assumes the out-of-state company takes care of all the insurance, including Workers' Compensation. The out-of-state company thinks the manager is taking care of the Workers' Compensation. It does not get paid for a couple of years until it comes to someone's attention. Would this bill require the Department the option to take a look at the circumstances?

Mr. Wood responded that he thinks **SEN. BENEDICT** has called attention to a weakness in the bill and he doesn't know that the \$10,000 is any magic number but he suspects that it would be better if the bill read "up to" and then a certain figure so that the Department has some discretion in that case.

Unfortunately, these problems usually do not show up until someone is hurt and then that particular employer has some real problems with being sued because he doesn't have coverage.

SEN. BENEDICT asked if the language "willfully or knowingly" would be appropriate?

Mr. Wood said the purpose of the act is to call to the legislator's attention to the fact that the situation does exist and this committee could well decide what type of wording to have to penalize these people.

SEN. DEBBIE SHEA asked **Jerry Driscoll** in Section 11, the Department of Labor suggested taking "the Department fails to disapprove the agreement in writing within 14 days", how would that affect this bill?

Mr. Driscoll said if it is on line 16 it says the same thing.

SEN. CASEY EMERSON asked **George Wood** on page 7 we have been discussing the \$25 license fee and the last time it was discussed the time was set for a three year period, can that \$25 for three years and then renew it every third year at \$25.

Mr. Wood responded line 18, subsection (d) says that it remains in effect for one year. It could certainly be changed to remain in effect for three years.

SEN. SUE BARTLETT asked **Mark Barry** since the State Fund has several small accounts, people who pay less than \$1,000 premium, what is the appropriateness of taking the penalty to a \$10,000 level for uninsured, treble or \$10,000? In other words what

should the premiums for a small employer be who has gone uninsured?

Mr. Barry responded Workers' Compensation is a mandatory coverage in Montana. There are those employers who are not paying for that coverage and are not caught until there is an injury. After that has occurred, then the costs tend to rise. In previous assessments insurers have been contributing to the Uninsured Employer's Fund. Those people who are trying to get out of this system until a claim appears should be penalized.

Mr. Barry said he does not have a strong feeling about the \$10,000 and does not know what the average cost of a claim is for the State Fund. He thinks the point is there are employers that will not get coverage because there is only a \$200 penalty. The minimum premium is \$210, which is fairly low coverage for unlimited insurance. They should be able to afford that and negate the possibility of treble damages.

SEN. BARTLETT then asked **SEN. KEATING**, regarding the amendment of SB 45 to achieve going to a renewal of a three year period, should this bill pass how did he see the two bills being reconciled in the process.

SEN. KEATING responded there are several ways it could be handled, the provision could be deleted from this bill or they could coordinate it with SB 45 so that if they both pass they both state the same thing.

SEN. BARTLETT asked what his preference in this matter is since there is a conflict?

SEN. KEATING responded he doesn't have a preference right now as he hasn't had the time to consider it.

SEN. BENEDICT asked **George Wood** in regard to assessments again and the language that states the fee for the application and any renewal must be determined by the Department in an amount that is sufficient to fully fund the cost of administering the program what his rationale is behind that and coordinate it with his feeling about assessments.

Mr. Wood responded the problem with assessments that are not fully funded is that the costs shifts over to the assessment which is levied against Plan I, II, and III. Then there is those who is complying with the act and the intent of the act covering their employees by Workers' Compensation, paying part of the fee for those who want to take themselves out of the act. If people want to opt out of the act he thinks that is permissible. But those who are in the act should not pay for it.

SEN. BENEDICT asked why this wasn't attacked by doing something about the assessment and finding some other funding source rather

than an assessment on the insurers instead of letting the Department set their own fee?

Mr. Wood responded if there is a reasonable way to assess a fee sufficient to cover the cost so that it is transferred someplace else, he would support it. He felt that the fee determined by the Department would have to pass the budget office and budget process in the legislature and therefore it would be a reasonable charge.

There was talk about a dollar amount which doesn't seem to satisfy this committee. Regarding the \$10,000, **Mr. Wood** said he omitted the fact that if you read that section it says the Department "may". Section 39-71-519 gives the Department the right to compromise that.

Closing by Sponsor:

SEN. KEATING closed by stating there are a number of good things in this bill that he hopes the committee will do-pass. If there are some areas that need a little work, he is sure the committee will handle it.

HEARING ON SB 290

Sponsor: SENATOR THOMAS KEATING, SD 5, Billings

Proponents: George Wood, Montana Self-Insurers' Association
Pat Haffey, Department of Labor & Industry
Bob Worthington, Montana Municipal Insurance Authority (MMIA)
Allen Chronister, Montana Schools Group Risk Retention Program (MSGRRP)
Gary Weins, Montana Electric Cooperative's Association
Lance Melton, Montana School Board Association
Jim Brown, Department of Commerce
Don Waldron, Montana Rural Education Association
Mark Barry, State Fund
Jacqueline Lenmark, American Insurance Association (AIA)
Jack Holstrom, Montana Association of Counties

Opponents: None.

Opening Statement by Sponsor:

SEN. TOM KEATING, SD 5, Billings, said SB 290 revises the Workers' Compensation assessments. It is a simple bill and the assessment is based on the benefits paid rather than on premiums paid.

The Department and those who have requested the bill have worked out a percentage. Page 3, line 5 has a 2.15% and they are asking

ASSESSMENT ADVISORY GROUP REPORT

December 23, 1996

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 3

DATE 2-18-97

BILL NO. SB 349

INTRODUCTION

The Assessment Advisory Group (AAG) was created by the Montana Department of Labor and Industry, Employment Relations Division (ERD), to review the activities and the financial allocation of the assessment that is charged every workers' compensation insurer in the State of Montana.

Members of the AAG were:

Plan I

Marilyn Bartlett

Golden Sunlight Mines

Bob Worthington

Montana Municipal Insurance Authority

Plan II

Jacqueline Lenmark, Esq.

American Insurance Association

Plan III

Mark Barry

State Compensation Insurance Fund

Supporting staff from the ERD included:

Denny Zeiler

John Weida

John Maloney

Tammy Peterson

Kathy Burton

This report contains the final recommendations of the AAG members.

We encourage the Department of Labor and Industry to consider the recommendations contained in this report as part of its 1997 legislative agenda.

MISSION STATEMENT

The mission statement of the AAG is:

The Assessment Advisory Group (AAG) will examine the government functions funded by the workers' compensation administrative assessment and make recommendations to the workers' compensation community through the following goals:

- * *Identify acceptable, appropriate, and necessary regulations and services;*
- * *Recommend effective processes to perform functions;*
- * *Mutually agree upon a simplified, understandable, and equitable assessment*

- process;*
- * *Continue to improve communication within the workers' compensation community;*

for the purpose of developing a long term direction for the administrative assessment.

Current law provides that the cost to administer the Montana Workers' Compensation Act and other occupational safety acts be borne by Montana workers' compensation insurers. The law provides for assessment to each plan insured for direct costs generated by the insurers and a portion of indirect costs allocated by "proper accounting and cost allocation procedures." The workers' compensation court, in interpreting these provisions, held that the assessment methodology currently in statute is constitutional and does not violate equal protection and due process standards. The court also held that the department's methodology amounted to de facto rulemaking and thus was void, and ordered the department to properly adopt rules and recompute the assessment. In view of the court's decision, the AAG reviewed department functions and the assessment with 3 general guidelines:

- All fee based activities should pay their own way;
- If a direct/indirect cost allocation method is adopted, costs should be allocated to the smallest identifiable unit;
- Only workers' compensation regulatory functions may be funded by this supplementary insurer assessment.

We have provided recommendations in 2 distinct parts. The first part recommends how insurers should pay for the costs associated with administering the workers' compensation act. The methodology recommended reflects a better match of the cost of regulating the system based on usage of the system. The second part of the report contains recommendations for administrative and operating efficiencies based on a review of the department functions and operations.

PART I - FUNDING THE ADMINISTRATIVE ASSESSMENT

The committee strived to assign the cost of the assessment in an equitable manner. With this goal in mind, the AAG identified an alternative method to fund the administrative assessment calculated using a fixed percentage of a defined base.

The AAG recommends the assessment be calculated as 2.15% of all paid losses. Paid losses are defined as actual indemnity benefits paid and actual medical benefits paid from the prior calendar year preceding the assessment fiscal year. Each medical claim, on a per occurrence basis should be limited to a maximum of \$200,000 paid amount each year. The minimum assessment should be increased to \$500. Each plan member payment would be due July 1 of each year.

The percentage amount applied to paid claims is based on the following 1996 actual costs and 1997 budget amounts adjusted for estimated savings as recommended in Part II of this report.

We have adjusted the assessment amount for the areas the AAG feels the department can and should decrease the assessment to the plans. Paid claims data has been provided by the department.

Adjustments to Assessment	1996 Actual	1997 Budget
Net Assessment	<u>\$3,623,108</u>	<u>\$3,517,727</u>
Adjustments to Assessment:		
Plan II Compliance	\$82,359	\$78,201
Independent Contractor	95,316	0
Trade Group Determination	2,162	2,203
Underinsured Employers Fund	61,169	0
Occupational Safety Statistics	51,596	47,400
Safety Culture Act	54,430	37,408
Boiler/Crane Inspection	<u>60,527</u>	<u>97,133</u>
Adjusted Assessment	<u>\$3,215,549</u>	<u>\$3,255,382</u>
Total Paid Claims (CY 1995)	<u>\$146,171,297</u>	<u>\$146,171,297</u>
Assessment as a Percent of Total Paid Claims	<u>2.20%</u>	<u>2.23%</u>

AAG has reduced the recommended assessment to 2.15% of paid claims because we believe there should be additional savings in administrative resources used to calculate and track the assessment. In addition, the department should consider other recommendations contained in Part II of this report which would provide operational efficiencies.

Paid claims reflects the actual usage of the workers' compensation system. It is a more appropriate match of the cost of regulating the system because the existence of claims reflects usage of the system. It relates the services received from the department to the cost of those services. It provides employers and insurers incentives to enhance safety in the work place because improved claims experience will be reflected in savings in the assessment.

This recommendation in funding provides the department flexibility to provide regulatory services and manage their budget within the amounts received. It provides funding to the department in a manner similar to the funding of other state departments.

The AAG further recommends the department adopt the following considerations to the

taxpayers and collection enhancements.

- Allow quarterly payments from insurers of annual assessment charge;
- Charge a penalty for late payment of assessment;
- Unfunded mandates imposed on the department may not be funded from the assessment.

Assessment Allocation Methodology:

The AAG believes the department should implement the assessment plan described above. Until legislation can be passed, the department, at a minimum, should move to effect the findings in the recent workers' compensation court ruling. This would include the following.

- Actual costs for the funding of specific Department of Labor and Industry functions, where possible and fiscally responsible, would be tracked by fiscal year. These costs would be allocated by Plan (including the separation into Plan I-S and Plan I-G, described later).
- The allocation of all direct costs by plan would be used to determine the percentage allocation to each plan.
- All indirect costs would be allocated by plan, using the percentage established from the distribution of direct costs.
- The assessment allocation for Plan I-S insurers would be based on payroll, or other methodology, mutually agreed upon by the plan participants.
- The assessment allocation for Plan I-G insurers would be based on premium, comparing each individual plan group to premiums charged by all groups electing Plan I-G participation.

The AAG examined alternative ways to allocate the total amount of the assessment due from Plan I, under the current assessment process. The methodology used in the past distributed the amount for Plan I to each self-insured entity on the basis of the gross annual payroll incurred by each entity in the previous calendar year. The following recommendation was crafted by Plan I AAG members that represent private and public entities within Plan I. It creates an alternative way of assessing Plan I. This methodology should be considered during the period legislation changes are sought to implement the AAG funding recommendations.

Facts

- For all Plan I insurers the current allocation of the assessment by payroll does not reflect usage. Therefore, the current assignment methodology does not meet the general recommendations of the committee.

- There are two distinct types of Plan I insurers: Individual self insurers representing one employer and group/pooled self insurers made up of multiple employers. Current statute treats both of these organizations in the same manner with respect to funding the assessment. Yet the operations of the two groups are uniquely different.

Recommendation: The AAG committee recommends that, for purposes of assignment of assessment charges statute be amended to create two distinct categories of Plan I insurers.

They are: PLAN I-S Individual organizations and organizations that operate as a single controlling entity with control over subsidiaries.

 PLAN I-G Organizations made up of multiple employer groups, with separate distinct management and control, that have banded together for the purpose of self insuring like exposures for workers' compensation coverage.

Organizations electing to participate as a Plan I-G entity would make a one-time election for this right.

PART II - OPERATIONAL RECOMMENDATIONS

The following section makes specific recommendations for each functional area funded by the administrative assessment on insurers. It is based on a review of the functions of the department and a review of the workers' compensation act. We recommend:

Legal Services

The penalty on uninsured employers should be increased to fully fund compliance related legal work on uninsured issues. **Legislation required to amend sections 39-71-503 and 504, MCA.**

Special Projects

Non-mandated special projects may be undertaken only with the consensus of insurers or others involved. As special projects occur, funding should be derived on a fee for service basis. ERD should no longer produce the Blue Book.

Claims Management

1. Section 39-71-303, MCA: Determination of non-monetary wages (minimal impact).
Recommendation: Repeal of statute. **Legislation required.** Legislation has been proposed by the department.
2. Section 39-71-414, MCA: Subrogation.
Recommendation: Amend statute to remove ERD's required functions. **Legislation required.** Legislation has been proposed by the department.

3. Section 39-71-610, MCA: payment of benefits prior to hearing.
Recommendation: Amend legislation to replace department responsibility with the Workers' Compensation Court. **Legislation required.**
4. Section 39-71-741, MCA: Compromise settlements and lump sum settlements.
Recommendation: Amend statute to deal only with unrepresented cases. Put a 14 day time frame to disapprove the settlement, otherwise, it's approved. **Legislation required.**
5. Repeal section 39-71-1013, MCA - rehabilitation plan filing - because it is redundant.
Clean up referencing in those areas of section 39-71-1006, MCA affected by repeal of section 39-71-1013, MCA. **Legislation required.**
6. Sections 39-72-XXXX, MCA: The Occupational Disease (OD) Act needs re-evaluation.
ERD should convene a task force to review the OD act for consistent application of processes and procedures between the workers' compensation act and the OD act.

The department should implement changes to the claims function as it now exists, including:

- reduce statutory oversight requirements and staff;
- focus on educating the Workers' compensation industry about changes, updates, court rulings and new statutes;
- move toward a 'by request' or 'complaint response' oriented function;
- focus on the exception or problem areas of the system.

Department staff have expressed an interest in establishing an ombudsman program. AAG members do not support implementing an ombudsman program until efficiencies are achieved in current functions funded by the assessment, and until the cost benefit of an ombudsman program is known.

AAG members support electronic reporting of First Reports of Injury and Subsequent Report. Significant reporting through EDI (Electronic Data Interchange) would relieve much of the pressure on ERD staff to enter data into the Workers' Compensation Data Base System.

ERD should immediately enhance accessibility to all insurers' prior claim histories of claimants in an effort to coordinate benefits and investigate fraud. Legislation may be required.

Data Analysis

Refer to discussion of MIS.

Medical Regulation

Current medical regulation activities should be separated to track MCO functions apart from the other activities associated with medical regulation. For purposes of attaining efficiencies in government, we recommend the regulation of MCO's, HMO's and PPO's be consolidated in another agency of government that could act as a central entity to regulate all medical providers in the state. The cost of regulating these functions should be supported through fees collected from application, renewal and plan modification. Time studies should be conducted to determine how to set fees.

Utilization and treatment standards are an emerging medical cost containment strategy. Information about the effect of utilization and treatment standards on medical costs is mostly anecdotal at this time. In many instances, it appears utilization and treatment standards would increase the costs to the Workers' compensation system. Additional costs would be assessed to insurers in the way of potentially costly treatment or litigation. These costs would in turn be passed on to employers. We recommend that insurers and representatives from organized labor be added to the development committees, and that ERD obtain baseline data as soon as possible. Section 39-71-1109, MCA, should be repealed or amended to add language on the implementation of standards, and clarify the usage of the utilization and treatment guidelines. Statutory language should recognize the dynamic nature of utilization and treatment standards and emerging medical technology. **Legislation required.**

Plan II Policy Compliance

Repeal section 39-71-2206, MCA, which requires security deposits from Plan II insurers. The deposits are redundant to guaranty fund protection. The department should use the MIS system to produce an insurer list to send to the Insurance Commissioner for verification of coverage.

Legislation required.

Estimated savings: \$82,359

Mediation

The workers' compensation mediation function should be privatized. The cost of mediation would be paid by the parties involved but would not be part of the administrative assessment.

Estimated Savings: \$344,344

Independent Contractor

Fees collected for independent contractor exemptions should support the cost of the activity. The cost of exempting employers from the statutory requirements should not be borne by insurers.

Legislation required.

Estimated Savings: \$95,316

Trade Group Determination

The department function should be deleted. Insurers should determine trade groups they will insure. Certification by the department is unnecessary. **Legislation required.**

Estimated savings: \$2,162

Underinsured Employers Fund

Sections 39-71-531 through -534, MCA, should be repealed. The contemplated function should be and is performed by insurers and designated advisory organizations and is addressed by recently strengthened insurance fraud provisions. **Legislation required.** The department will initiate legislation.

Estimated savings: \$61,169

Management Information System (MIS)

The MIS system receives the largest allocation of funds from the assessment, has exceeded all projected costs, and continues to grow in cost. For many insurers it is the area of greatest concern.

- Cost savings to insurers resulting from the MIS should be monitored and demonstrated.
- Electronic filing as a means of cost savings to insurers should be promoted.
- If insurers access to MIS data and information continues to be restricted, funding should be shifted to the General Fund. **Legislation required.**
- Insurers access to data as a means of claims management and cost savings should be facilitated. **Legislation may be required.**

The department should seek and review options available and potential cost savings to out source the MIS function. Since the legislation in 1993, data analysis capability has improved dramatically across the country. Organizations exist within the workers' compensation industry with the capabilities to provide the analysis of data for management information about Montana's workers' compensation system. The department could collect the data and provide the data to an organization with the capacity to provide the management information required by legislation. The department would act as a data collection point therefore reducing costs related to the MIS to insurers. Organizations offering data analysis include:

Workers Compensation Research Institute (WCRI)
National Council on Compensation Insurance (NCCI)
IAIABC
Risk Data Corporation (RDC)
Integrated Benefits Institute (IBI)

Occupational Safety Statistics

The general public benefits from this function. The cost of the function should be eliminated from the assessment and alternative funding obtained from the general fund. We also recommend privatization as a potential costs savings of performing this function. **Legislation required**

Estimated savings: \$51,596

Safety Culture

When the Safety Bureau receives a request for safety services, the bureau should refer the employer to the employer's insurer per the Safety Culture Act. The Safety Bureau should develop priorities for actions on employer requests based on industry groups and hazard groups. This is consistent with the legislative intent of the Safety Culture Act which **requires insurers to provide employers with safety services upon employer request**. It is also consistent with the philosophy that employers and insurers assume more responsibility for workplace safety. We recommend:

Any new proposed safety program be carefully evaluated to determine whether it benefits the workers' compensation systems as a whole or rather is directed to general liability

concerns. Liability driven programs should not be funded by the administrative assessment, because of their broader public benefit.

The department explore and develop fee for service education and training programs, being mindful of the ability of small employers to pay for these services.

The department continue to evaluate and develop methods to avoid duplication in safety service delivery.

ERD should limit the assessment or costs for the Safety Culture Act to 1994 actual levels to comply with the intent of the legislation. ERD should assist the safety committee to seek and better utilize non-monetary resources available from private entities and other government agencies to minimize the impact to the assessment.

Estimated Savings: \$54,430

Onsite Consultation & Mandatory Inspection

Generally, the AAG recommends the following safety functions of the department should not be included in the Workers' Compensation Administrative Assessment. Many of the following functions are not limited to worker safety but also relate to general liability, public exposure and public safety issues.

Onsite Consultation - The Onsite Consultation function is partially funded with federal funds granted from the Occupational Safety and Health Administration (OSHA). The grant requires states to provide a 10% match from non federal sources. The administrative assessment is used as matching funds for this grant. Historically amounts in excess of the 10% needed to match the federal funds are spent by the Onsite Consultation function. The Safety Bureau should limit the use of assessment funding for this function to the 10% required to obtain federal funds and limit the assessment to insurers to the required 10% federal matching funds. The Safety Bureau should coordinate with OSHA to eliminate unnecessary duplication of inspections, and clarify the meaning and parameters of the OSHA/Safety Bureau grant agreement confidentiality requirements.

Estimated savings: \$246,394

Mandatory Inspection - When the Safety Bureau receives a request for safety services the bureau should refer the employer to employer's insurer, per the Safety Culture Act. The Safety Bureau should prioritize inspections to focus on higher hazard activities and exposure groups identified by loss data. The list of requests should be used to coordinate safety inspections with insurers. The bureau should strive to make inspections more efficient.

Mining Inspection

The AAG recommends that separate tracking occur for metal mine inspections and coal mine inspections.

The Mining Inspection function is currently partially funded with federal funds granted to states by the Mine Safety and Health Administration (MSHA). States are required to provide 20% matching funds from non federal sources. The administrative assessment has been the source of the matching funds for this grant. The function has historically spent in excess of the amount required to match federal funds and the assessment has covered the additional cost. The Safety Bureau must limit the amount of assessment funding spent for this function to the amount needed to match federal funds provided. We question the validity of funding mining inspections through the assessment. Mining inspections should be dealt with in the same manner as other high hazard industries. The current process is a duplication of inspection authorities. We recommend that the Safety Bureau be allowed to accept two of the MSHA inspections to be counted toward the MCA required standard of four inspections per year. In addition, the Safety Bureau should utilize the MSHA inspection list to avoid duplication of inspections, by contacting MSHA prior to scheduling mining inspections. The Safety Bureau should facilitate a dialogue between the bureau and mines to update standards, paying particular attention to contractors performing work at mine sites.

Estimated savings: \$198,972

Boiler/Crane Inspection

The AAG considers boiler inspection to be a general liability issue rather than a workers' compensation liability issue. A boiler inspection program benefits the general public. We recommend that 39-71-201(1) be amended to delete reference to the Department of Commerce as a recipient. **Legislation Required.**

Estimated savings: \$60,527

Other general considerations to the department for operations are:

- Plans I, II and III want to participate in ongoing dialogue with the department and other entities to help plan an assessment that realistic and workable for all parties.
- The department should continue to look for efficiencies for administrative functions

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 4
DATE 2-18-97
BILL NO. SB 349

State Compensation Insurance Fund

Department of Labor and Industry Administrative Assessment
History of Administrative Assessment to the State Fund

Fiscal Year	Administrative Assessment	Percent of Total Assessment
FY 91	\$1,277,927	51%
FY 92	\$1,486,323	48%
FY 93	\$1,615,458	53%
FY 94	\$1,864,156	50%
FY 95	\$2,159,260	55%
FY 96	\$1,569,385*	43%
FY 97	\$1,474,582	42%

* Revised - original assessment paid was \$2,018,116 for FY 96. State Fund has received a credit for the difference.

**Department of Labor and Industry
Regulatory Administrative Assessment**

Functions and Costs Fiscal Year 1996 and Fiscal Year 1997

Functions:	1996 Actual	1997 Budget
Legal Functions:		
Workers' Compensation Court	\$339,773	\$372,988
Hearings/Legal	249,967	294,550
Employment Relations Division - Administration	289,085	321,396
Special Projects	(3,823)	0
Claims Assistance Bureau:		
Claim Management	250,143	345,035
Data Analysis	280,636	288,082
Rehabilitation - Dept. Of Labor	17,585	0
Mediation	344,344	376,772
Management Information System(A)	617,391	347,635
Claims Assistance Bureau - Administration	82,675	90,797
Regulation Bureau:		
Medical Regulation(A)	99,253	103,994
Self Insurance Compliance - Plan I	125,021	151,532
Plan II Compliance (A)	82,359	\$78,201
Independent Contractor Exemptions(A)	95,316	0
Trade Group Determination(A)	2,162	2,203

Underinsured Employers Fund(A)	61,169	0
Regulation Bureau - Administration	44,295	23,281
Safety Functions:		
Occupational Safety Statistics	51,596	47,400
Mandatory Inspections	246,394	284,476
On-Site Consultation (Federal Match)	12,115	14,518
Mining Inspections	198,972	223,956
Mine Training (Federal Match)	21,723	16,369
Safety Culture Act	54,430	37,408
Boiler/Crane Inspection(B)	60,527	97,133
Total Assessment	\$3,623,108	\$3,517,727

(A) - Costs related to functions addressed in SB 349
(B) - Costs related to functions addresses in SB 290

STATE LABOR EMPLOYMENT
EXHIBIT NO. 5
DATE 2-18-97
BILL NO. SB349

DATE 2-18-97

SENATE COMMITTEE ON Labor

BILLS BEING HEARD TODAY: SB 353, SB 325, SB 349,
SB 290, SB 350

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
<u>Ronald D. Small</u>	<u>Golden Sunlight Mine</u>	<u>325</u>	<u>Yes</u>	
<u>Joe Scheller</u>	<u>ASH Grove, CHEAT</u>	<u>325</u>	<u>Yes</u>	
<u>Jim Andrews</u>	<u>Montana Mining Assn</u>	<u>325</u>	<u>Yes</u>	
<u>John PETTY</u>	<u>Luizenne America</u>	<u>325</u>	<u>Yes</u>	
<u>Elton Chernay</u>	<u>Continental Lime Inc.</u>	<u>325</u>	<u>Yes</u>	
<u>Rick Dale</u>	<u>Golden Sunlight Mines</u>	<u>325</u>	<u>Yes</u>	
<u>MARK BARRY</u>	<u>State Fund</u>	<u>290 349</u>	<u>X</u>	
<u>Jacqueline Genmark</u>	<u>Am. Mts. Assn</u>	<u>325 349, 290</u>	<u>X</u>	<u>350</u>
<u>John Shantz</u>	<u>Mt. Assn Rocks</u>	<u>350</u>	<u>X</u>	
<u>Allen Chronister</u>	<u>Mt. Schools Group</u>	<u>290 349</u>	<u>X</u>	
<u>Howard Barry</u>	<u>Mt. Schools Group</u>	<u>290 349</u>	<u>X</u>	
<u>Rich Shaffer</u>	<u>SUPS/SAM</u>	<u>290</u>	<u>X</u>	
<u>Alan Petersson</u>	<u>SAM</u>	<u>290</u>	<u>X</u>	
<u>Carole Phillips</u>	<u>Self</u>	<u>350</u>	<u>X</u>	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2/18/97

SENATE COMMITTEE ON Labor

BILLS BEING HEARD TODAY: _____

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Ronda Carpenter	Mt Housing Providers	SB350	X	
SHARON HOFF	MT CATHOLIC CONFERENCE	SB 350		X
Jane Lopp	Mt Human Rights Commission	SB350		X
DON WAHLGREN	MT Rural Ed ASSN.	SB 290	X	
Don Judge	MT STATE AFL-CIO	SB 349		
Jim Hill	St. of Montana DOLL	SB 349	X	
Cathy Swift	Self	SB 350		X
Jim Brown	Bdy. Code Bm. Comm.	SB 290	X	
DEBBY LEADBETTER	SELF	SB350	X	
DIANE RICE	SELF	SB350	X	
Moe Wozepko	Katispell Chamber	SB350	X	
Rodney Luee	HRC	SB350		
DICK PATTERSON	MSCA	SB350		X
Don Allen	Allerpe & Associates	SB 350	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-18-97

SENATE COMMITTEE ON Labor

BILLS BEING HEARD TODAY: _____

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Alane Harkin	self	350		X
Pamela Darkenwald	"	350	X	
Don Chance	MT. BUILDING IND. Assoc.	350	X	
Bob Gilbert	MT. PET. MARKETERS A	350	X	
Esa Putaji	MAR	350	X	
Nick Robinson	Geri Viffin	353		X
Russ Ritter	MRL	325	X	
George Wood		325-349 353-280	✓	
David Dargatz	mt chamber	353		✓
L.C. Ken	Hillings	350	✓	
Jack Marsting	Helen S.F.A.	350		
GREG Pangle	Dr. Zoom's Auto Parts	350	X	
Rob Armstrong	RoCo Auto	350	X	
Gary J. Holley	Countryside Body Shop	350	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-18-97

SENATE COMMITTEE ON Labor

BILLS BEING HEARD TODAY: _____

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Bib Woodington	NMAR	349 290	✓	
P.C. Musgrove	NMAR	350	✓	
Kathy Schulte	NMAR	350	✓	
Karen Haas	NMAR	350	✓	
Karen Rocha	NMAR	350	✓	
John McInt	HRC	350		✓
Jack Halstrom	MALCO	349 290	✓	
John Hoff	Dept of Labor	all		
Dean Pirovatti	NRAA Auto Parts	350	X	
Charles R Brooks	Billings Chamber	SB353		X
Anne MacDugue	Human Rights			X
Jim Mel drum	Self	350		X
Bill Snoddy	MCDONALD GULD PROJECT	325	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-18-97

SENATE COMMITTEE ON Labor

BILLS BEING HEARD TODAY: _____

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
LANCE MELTON	MSBA	290	X	
PETER SULLIVAN	Myself	350	X	
Jan Schenk	"		X	
Christine Kaufmann	MT Human Rights Note	350		X
Tom Hopwood	Lee Enterprises Inc	350	✓	
Don Manderville	Montana Telephone Assoc.	290	✓	
Mike Strand	Montana Independent Telecommunications Systems	290	✓	
Naked Regg	Self	350		✓
Sue Fitfield	MT Fair Housing	350		✓
CEDRIC BLACK EAGLE	MT. Fair Housing	350		✓
Jerry Orsoll	MT State Building Trades	349	X	
Larry Wiens	MT Electric Workers Assn	290	X	
Robert Fitzpatrick	Pegasus Gold	325	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By CHAIRMAN TOM KEATING, on February 20, 1997, at
3:24 P.M., in Room 415.

ROLL CALL

Members Present:

Sen. Thomas F. Keating, Chairman (R)
Sen. James H. "Jim" Burnett, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Benedict (R)
Sen. C.A. Casey Emerson (R)
Sen. Dale Mahlum (R)
Sen. Debbie Bowman Shea (D)
Sen. Fred Thomas (R)
Sen. Bill Wilson (D)

Members Excused: None

Members Absent: None

Staff Present: Eddye McClure, Legislative Services Division
Gilda Clancy, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:	SB 375, SB 364; 2/17/97
Executive Action:	SB 353 TABLE
	SB 325 DO PASS
	SB 290 DO PASS AS AMENDED
	SB 349 DO PASS AS AMENDED
	SB 350 DO PASS
	SB 375 DO PASS AS AMENDED
	SB 364 TABLE

HEARING ON SB 375

Sponsor: SEN. FRED THOMAS, SD 31, Stevensville

Proponents: Jacqueline Lenmark, American Insurance Association
Mark Barry, State Fund
George Wood, Montana Self-Insurers' Association
Oliver Goe, Montana Municipal Insurance Authority
and Montana Schools Group Risk Retention Program
Ray Barnicoat, Montana Association of Counties

you can't operate it, under the law. If you can't operate it you've got a cold school or cold hospital or cold someplace in the winter time so he believed they would pay \$26 or \$30 dollars an hour for a couple of hours in order to be able to operate their boiler.

SENATOR MAHLUM asked how many of these fees are going to be charged to one place? For instance, will they have an external inspection and an internal and a hot water heating supply and a steam heating and a power boiler all at the same time?

CHAIRMAN KEATING responded he couldn't answer that. If nobody is comfortable with this, we can just vote it down.

Vote: Motion DO PASS ON THE AMENDMENTS CARRIED 5-4.

Motion/Vote: CHAIRMAN KEATING MOVED DO PASS SB 290 AS AMENDED. Motion CARRIED UNANIMOUSLY.

{Tape: 2; Side: B; Approx. Time Count: 5:29 p.m.; Comments: N/A.}

EXECUTIVE ACTION ON SB 349

Amendments: See (EXHIBITS 13 & 14).

Motion: SENATOR EMERSON MOVED DO PASS ON AMENDMENT SB034901.AEM (EXHIBIT 13).

Discussion: SENATOR EMERSON stated in some of the other bills we've gone to three years for a license and so he thought this ought to match. He said we'll strike 1 year and put in 3 years, we'll strike annually and put in every 3 years.

CHAIRMAN KEATING said this section of the law has been changed by SB 45, so if SB 45 survives, this will get done; however, if it doesn't survive it won't get done.

Vote: Motion DO PASS ON AMENDMENT SB034901.AEM CARRIED 8-1.

SENATOR THOMAS stated that a couple of these amendments [SB034908.AEM] can be segregated. He asked **Jim Hill** from the Department to explain the first two.

Jim Hill, Department of Labor explained the first amendment has to do with the conflict that exists when you share information out of our data base with insurers and the privacy issue. This amendment was created in an effort to specifically tell us what information we can share. That information is listed in this amendment as a result of our legal staff telling us this is the information we should be able to share with insurers. The last

part of the amendment has to do with the fact the insurer gets the information and must keep the information confidential.

The second amendment has to do with the report being created on an annual basis rather than biennial basis, as the original bill calls for. We've also asked that we add the section that says we may publish special reports. He thought the original law called for potentially quarterly reports, and asked that it be special reports.

SENATOR EMERSON asked if that is going to change the fiscal note?

Jim Hill responded no, it wouldn't. In particular the annual report is something that is for the most part automated at this point and would be relatively easy to create for the public. It wouldn't be substantially more.

Jacqueline Lenmark stated they do not have any objection to amendment number 1 if it could be amended to say the name and address of the insurance company or insurer and claim adjuster. The company insuring the claim is important information. The only thing added is insurer and claim after "the".

At the very end of the section, one of the disappointments of the insurers who have paid for this very expensive data base is they have not also had access to it for assistance in claims processing; therefore, they would like this information not isolated only to the prosecution of fraud but the use of the information gathered would also be for claims management or claims processing. They would like to see that language added at the end of amendment #1. If we're going to put all the parameters around it, we need to be clear it's not only prosecution of fraud but also investigation.

CHAIRMAN KEATING said for the investigation and prosecution of fraud.

Jacqueline Lenmark said she would also like the Committee to know the proponents of the bill, other than the Department, oppose amendment #2.

Motion: **SENATOR FRED THOMAS** MOVED DO PASS ON AMENDMENT #1 AS IT WAS REDONE.

Discussion: **SENATOR BARTLETT** asked **Ms. Lenmark**, regarding the provisions in the Montana Constitution on individual privacy, do you think that there is a compelling state interest in releasing information for investigation and fraud in claims sufficient to overcome the right to individual privacy by a person whose record would be released for those purposes.

Jackie Lenmark responded in her legal opinion, this language is not necessary at all. It is being proposed out of the Department's concerns they are protected from improperly

releasing information. When an injured person puts their medical condition into issue in a legal matter (and that's what would be happening in a Workers' Compensation claim), and there would be an injury, they waive the privacy rights they have to their records about their medical condition. That's a rule of evidence that exists apart from the Workers Compensation Act, so I think this isn't necessary in any event; however, to protect the Department we are certainly willing to agree it's there in the statute.

SENATOR BARTLETT asked when they waive their rights, waive the protection of their medical records, aren't those medical records ordinarily drawn from somewhere besides a central data base that is operated by a state agency.

Jackie Lenmark answered not necessarily. Those records could be housed with a number of different entities. If that condition is in question, that privilege has been waived by the person who puts it in issue. If they don't put it in issue, the privilege is not waived. If it is an issue, the privilege is waived.

SENATOR BARTLETT said regarding the amendment, she supports the language to make it clear for the Department what they can do, and thinks **Ms. Lenmark** is correct in that the language may be unnecessary, but also thinks it's important, as a reminder to people, there is a balancing test agencies must do anytime they're dealing with this kind of information. She is uncomfortable with the use of that information for claims management or claims processing. She carried the bill in the Senate which **REPRESENTATIVE CHASE HIBBARD** sponsored in the House. That established the data base in the first place. That was never a reason for that data base to be established and regarding medical records, it seems to her preferable for insurers to go to the medical personnel or facility having those records or to the other insurer if it's a case of a subsequent injury to get information about the way the claim was handled. She strongly encouraged the insurers to use those sources and not to attempt to manipulate this data base into something it was not intended to be.

Vote: Motion DO PASS ON AMENDMENT #1 CARRIED.

SENATOR THOMAS said if somebody else wants to move amendment 2, that's fine; however, he would like to move to amendments 3, 4 and 5 because he felt they fit together in dealing with that \$10,000. As the bill is written, everybody who missed their payment on their Workers' Compensation or lapsed coverage would be looking at a \$10,000 fine or more. Amendments 3, 4 and 5 restore the original language of the law and reverse this situation.

CHAIRMAN KEATING stated they are dealing with section 8. This is the uninsured employer section. He had a tendency to agree with **SEN. THOMAS** because in this section is where some unsuspecting

homeowners have been trapped in the past. They have contracted with somebody to do something around their house or in their barn and as in the case of Carl Hafer from Butte who contracted with an electrician to rewire his barn, the guy fell off the ladder and ended up costing Mr. Hafer \$1,205,000 as an uninsured employer. That was one of those technicalities in that he spoke to the guy while he was working him, which all of a sudden established an employer/employee relationship. For the protection of some of those unsuspecting people, **CHAIRMAN KEATING** said he would like to hammer the contractor that goes bare, but doesn't want to catch some poor citizen in a real untenable situation.

SENATOR BENEDICT stated he could not agree more. He added that if SB 67 will allow the Department or the insurers to not accept or deny a claim within 30 days, and not need to have full penalty of that claim, maybe we ought to say it's an inadvertent thing. When the Department of Workers' Comp Division Plan 1's and Plan 2's say occasionally they might not accept or deny a claim within 30 days on an inadvertent basis, they shouldn't get hammered for that. The same thing should happen to a business. They shouldn't get hammered for doing something that was inadvertent.

Motion: **SENATOR THOMAS** MOVED DO PASS ON AMENDMENTS #3,#4,#5 OF AMENDMENTS SB034908.AEM.

Discussion: **SENATOR BENEDICT** said he heard the word discretionary and did not care whether it's discretionary or not, he did not want to put the power in the hands of the Department to levy a \$10,000 fine.

SENATOR BARTLETT said that's a perfectly valid point of view but we need to take into consideration the full range of situations that can occur. The example about the gentleman in Butte who thought he was dealing with an independent contractor and found out he wasn't, is a terrific argument for the independent contractor registration issues we have been dealing with. She said she is a little uncomfortable with the level of the potential penalties in the bill as it was written, felt the original penalties are truly insignificant for someone who is purposely going without Workers' Compensation Insurance. Regarding testimony from the State Fund, their minimum premium right now is \$210 a year, so if you get a penalty of \$200, what kind of an incentive is that for you to take out Workers' Compensation Insurance? She asked if there isn't some middle ground, because the concerns raised are valid ones about the individuals, homeowners and people who through a variety of means truly have an inadvertent lapse in their coverage. That's valid, but there are people out there who are simply refusing to carry Workers' Compensation and take their chances and what we currently have is meaningless.

CHAIRMAN KEATING asked **SEN. BARTLETT** if she recalled that he had the repealer in last session to repeal the uninsured employed by

the plan on the grounds it's a safety net. There are contractors, the unscrupulous, who do this on purpose and rely on these payments. He wanted to get rid of this section altogether and let people be sued, let the employer who goes bare be sued then toward negligence or whatever other actions the claimant would want to take. He was still fearful for the number who are getting nailed under this uninsured employer thing because the language of the law allows the courts to determine that employer/employee relationship. The courts generally lean toward that employer/employee finding, and because of the meaning of the court he did not want to not hit some people who really don't deserve to be hit and can't afford to be hit. Those who go bare take their chances because even under the uninsured plan, they may not necessarily get exclusive remedy if they go there. They can be sued for liability so there is an option by the claimant. He said he is going to vote for this amendment.

SENATOR BENEDICT stated he would also like to clear up something **SENATOR BARTLETT** said. That is the \$200.00, and the fact that maybe a minimum premium is \$200.00. He thought **SEN. THOMAS** wants to double the amount of premium that should have been paid, and if the premium should have been paid might have been \$700 or \$800 a year, that could amount to \$1400 if they had gone for a couple of years. So it's not that they're just going to a fine of \$200, because it's whichever is greater.

SENATOR THOMAS said this does apply to people who actually foul up their payment too and fall out of coverage because they didn't keep their payment current. It could be a minimum of \$200 and \$210 but they didn't keep their coverage up so they're hit with a \$200 fine. They weren't really trying to go bare, they just goofed up so this deals with everybody, which is difficult.

Vote: Motion DO PASS ON AMENDMENTS #3,#4,#5 CARRIED UNANIMOUSLY.

SENATOR THOMAS stated regarding amendment 6 on page 14, line 16, following "approve" it adds "or disapprove". It's meant to say "as it would be per the agreement is subject to Department approval or disapproval."

CHAIRMAN KEATING referred to the following sentence which says, "if the Department fails to approve the agreement in writing in 14 days, it is approved"??? He did not know how that all ties together.

Jacqueline Lenmark stated the proponents of this particular bill have no preference whether you use the term "approve" or "disapprove". The concern is the delay or time lapse at the Department waiting for some action. She stated they wouldn't oppose amendment #6, however, they would oppose amendment #7 which also relates to the same section.

They would prefer the term "working days" not be inserted but we use "days" as the most time limit in law, especially those that apply to legal proceedings, work on a set calendar day schedule and so for clarity and uniformity, we would prefer the days be calendar days, and it doesn't need to be specified. Without the addition of working days, it would mean calendar days.

Ms. Lenmark said they also strongly oppose the last line of amendment #7, with the insertion "of receipt of a properly completed agreement". Again, the problem they are trying to address is quick action on something that is already a matter of agreement, usually by two parties who are both represented by counsel. It shouldn't take an inordinate amount of time to process that agreement and it shouldn't require that kind of scrutiny.

SENATOR BARTLETT stated in the second half of that, she didn't see a difference between the language in the bill now, which the amendment proposes to strike, and the replacement language.

Ms. Lenmark stated to clarify the last two lines of #7, the problem they see is quibbling over whether an agreement is properly completed. The agreement is entered into by the claimant and typically represented by counsel, although not necessarily, and the insurer. If it is an agreement between the parties, that should be satisfactory, except in extraordinary circumstances. They want to avoid the haggling over whether an agreement is properly completed.

SENATOR BARTLETT stated if we simply use the words "of receipt of a completed agreement by the department", it seems it's possible that for whatever reason the whole agreement didn't get put in the mail and received by the Department or something, there is a point to be made about making sure that they have the complete agreement to look at and do a review on.

Jacqueline Lenmark said they wouldn't oppose that sort of an amendment.

SENATOR BENEDICT asked **SENATOR THOMAS** if amendment #6 and amendment #7 were Department of Labor amendments?

SENATOR THOMAS answered they were.

Motion/Vote: SEN. FRED THOMAS MOVED DO PASS ON AMENDMENT #6.
Motion CARRIED UNANIMOUSLY.

Motion: SEN. SUE BARTLETT MOVED DO PASS ON AMENDMENT #2.

Discussion: **SENATOR BARTLETT** stated amendment #2 is the issue over whether a report is issued annually or biennially. She recalled from the testimony an annual report is also one **REP. HIBBARD** sponsored; however, the whole purpose of that data base was to put together information on the full range of Workers'

Compensation, i.e. identify things like the cost of drivers in the system to be used predominantly by policymakers, and potentially by insurers and to compare themselves to the other plans to see if their performance needed to be improved. The Department has indicated there is no fiscal impact on doing a report annually, that was the intent of the original legislation, and **SEN. BARTLETT** thinks it's worth remaining faithful to that original intent. There hasn't been anything in the meantime to suggest a change.

CHAIRMAN KEATING addressed the amendments. In speaking as sponsor of the bill, he would respectfully resist the amendment. The consensus group that put the bill together, made the draft on a study basis and their biennial report is sufficient for everybody's purposes. He realized this came from the Department for whatever reason, but doesn't want to change the bill at this time.

SENATOR BARTLETT pointed out there were no legislators on that working group and legislators were to be one of the predominant beneficiaries of the data base and the reporting.

Vote: Motion DO PASS ON AMENDMENT #2 FAILED 4-5.

SENATOR BENEDICT he had one more amendment. It's a perceptual amendment, Page 7, striking lines 11 through 15. He had hoped **SENATOR EMERSON'S** amendment had addressed this, but this language is very inconsistent with the other independent contractor bills that are moving through the legislature. The fact they still call for the \$25 application fee, whereas this language allows the Department to set an amount sufficient to fully fund the cost of administering the program, which is like giving the Department a blank check. He suggested they strike 11 through 15, which would just allow current law to stay in place. We'll handle that in these other bills which are moving through on the independent contractors. Striking Subsection (b) allows it to remain the way it is in current law.

Jacqueline Lenmark suggested as an alternative, is a coordination section. You have a concern about writing a blank check to the Department. The problem is the insurers pay that blank check; the Department does not. Without some sort of limitation there, we are placing a burden upon our policyholders to fund other people who want to opt out of the system. That's not a fair thing to do to the employers who choose correctly to insure their employees. The problem is it's our policyholders who pay that blank check, and that's why we've suggested the fee be set so that exemption program be self-funding.

SENATOR BENEDICT asked **Ms. Lenmark** if she could you correct yourself? What her organization pays is in excess of the \$25.00, not the whole program. If they take in \$25.00 and it costs them \$35.00 to administer it, then they pay the extra \$10.00.

Jacqueline Lenmark said she spoke too broadly.

Motion/Vote: SEN. STEVE BENEDICT MOVED DO PASS TO RESTORE SUBSECTION (B) TO ITS ORIGINAL LANGUAGE. Motion CARRIED 6-3.

Vote: Motion DO PASS ON SB 349 AS AMENDED CARRIED UNANIMOUSLY.

{Tape: 2; Side: B; Approx. Time Count: 6:08 p.m.; Comments: N/A.}

EXECUTIVE ACTION ON SB 350

Amendments: See (EXHIBIT 15).

Discussion: CHAIRMAN KEATING said he had been approached from several angles. The bill has the right idea for re-arranging things. It may seem somewhat strict as to the Commission and it may not seem strict enough to some of the proponents, but he didn't know that this Committee had the time to rearrange this bill to suit everybody; however, there are a couple of things that might be done to make the bill less heavy-handed with regards to restrictions on actions of the Commission, but at the same time carry through the theme of helping the people who are involved in those Civil Rights complaints.

The one area which was recommended for amendment dealt with the rules of civil procedure as being too stringent, too complicated, too heavy for the work of the Commission in regards to mediating, investigating or working toward the settlement of the claims. It's been suggested we operate the contested case hearing under the Montana Human Rights Act as opposed to the Rules of Civil Procedure. If the committee were to agree, we could amend Section 9 of the bill to remove the Rules of Civil Procedure.

SEN. SUE BARTLETT said she heard such a variety of things from interested parties and was wondering about taking a moment to ask the three or four major interested parties to tell what they would like to see happen with this bill at this point.

CHAIRMAN KEATING said he would like to preface that request with his remarks from the principals involved. They have agreed the whole bill is very complicated and they do want to make changes. They are all interested in working towards a better bill for all sides. Also, if they want us to keep the bill alive, we can pass it in some form and then they can work on their amendments. When the hearing is in the House, they can mesh their ideas and "duke" it out over there.

David Owen, Montana Chamber of Commerce said they had a productive and good-faith meeting yesterday afternoon with the principals involved in this bill. They decided they needed more time to work on the language, get through the technical part and sort out the questions. Given the time constraints of the transmittal, it seems it would be best to make some immediate

MONTANA SENATE
1997 LEGISLATURE
LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL

DATE 2-20-97

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Amendments to Senate Bill No. 349
First Reading Copy

DATE 2-20-97BILL NO. SB 349

Requested by Senator Emerson
For the Senate Committee on Labor and Employment Relations

Prepared by Eddye McClure
February 19, 1997

1. Title, line 17.

Following: "FUND;"

Insert: "PROVIDING THAT AN INDEPENDENT CONTRACTOR EXEMPTION
REMAINS IN EFFECT FOR 3 YEARS;"

2. Page 7, line 18.

Strike: "1 year"

Insert: "3 years"

3. Page 7, line 19.

Strike: "annually"

Insert: "every 3 years"

Amendments to Senate Bill No. 349
First Reading Copy

Requested by Senator Thomas
For the Senate Committee on Labor and Employment Relations

Prepared by Eddye McClure
February 20, 1997

LABOR & EMPLOYMENT
14
2-20-97
SB 349

1. Page 3, line 28.

Following: "prosecution."

Insert: "In ensuring that the right of individual privacy is not infringed without a showing of compelling state interest, the information to be released, upon written request by an at-risk insurer, may only be the claimant's name, claimant's identification number, prior claim number, date of injury, the body part involved, and the name and address of the adjuster on each claim filed. Information obtained by an insurer pursuant to this section must remain confidential and may not be disclosed to a third party except to the extent necessary for prosecution of fraud."

2. Page 4, line 19.

Strike: "a biennial"

Insert: "an annual"

Following: "~~report~~"

Insert: "and may publish special reports"

3. Page 10, line 18.

Strike: "treble"

Insert: "double"

4. Page 10, line 20

Strike: "\$10,000"

Insert: "\$200"

Following: "greater."

Insert: "In determining the premium amount for the calculation of the penalty under this subsection, the department shall make an assessment based on how much premium would have been paid on the employer's past 3 year payroll for periods within the 3 years when the employer was uninsured."

5. Page 10.

Following: line 28.

Insert: "(2) The department may determine that the \$1,000 assessments that are charged against an insurer in each case of an industrial death under 39-71-902(1) must be paid to the uninsured employers' fund rather than the subsequent injury fund."

Renumber: subsequent subsection

6. Page 14, line 16.

Following: "approve"

Insert: "or disapprove"

7. Page 14, line 17.

Following: "14"

Insert: "working"

Following: "days"

Strike: "of the filing with the department"

Insert: "of receipt of a properly completed agreement by the
department"



SENATE STANDING COMMITTEE REPORT

Page 1 of 2
February 21, 1997

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration Senate Bill 349 (first reading copy -- white), respectfully report that Senate Bill 349 be amended as follows and as so amended do pass.

Signed: *Thomas F. Keating*
Senator Thomas F. Keating, Chair

That such amendments read:

1. Title, line 8.
Strike: line 8 in its entirety
2. Title, lines 11 and 12.
Following: "FUND;"
Strike: remainder of line 11 through "EMPLOYERS;" on line 12
3. Title, line 17.
Following: "FUND;"
Insert: "PROVIDING THAT AN INDEPENDENT CONTRACTOR EXEMPTION REMAINS IN EFFECT FOR 3 YEARS;"
4. Page 3, line 28.
Following: "prosecution."
Insert: "In ensuring that the right of individual privacy is not infringed without a showing of compelling state interest, the information to be released, upon written request by an at-risk insurer, may be only the claimant's name, claimant's identification number, prior claim number, date of injury, body part involved, and name and address of the insurer and claim adjuster on each claim filed. Information obtained by an insurer pursuant to this section must remain confidential and may not be disclosed to a third party except to the extent necessary for the investigation and prosecution of fraud, claims management, or claims processing."
5. Page 7, lines 12 through 15.
Following: "~~no~~" on line 12
Strike: "The"
Insert: "There is no"
Following: "~~initial~~"
Insert: "initial"

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Following: "~~application~~"
Strike: "~~and any renewal~~"
Insert: ". Any subsequent application"
Following: "~~fee~~" on line 13
Strike: remainder of line 13 through "~~program~~" on line 14
Insert: "accompanied by a \$25 application fee"
Following: "~~program~~" on line 15
Insert: "to offset the costs of administering the program"

6. Page 7, line 18.

Strike: "1 year"
Insert: "3 years"

7. Page 7, line 19.

Strike: "annually"
Insert: "every 3 years"

8. Page 10, line 18.

Strike: "~~treble~~"
Insert: "double"

9. Page 10, lines 19 and 20

Following: "No. 3" on line 19
Strike: remainder of line 19 through "~~uninsured~~" on line 20
Strike: "~~\$10,000~~"
Insert: "\$200"
Following: "greater."
Insert: "In determining the premium amount for the calculation of the penalty under this subsection, the department shall make an assessment based on how much premium would have been paid on the employer's past 3-year payroll for periods within the 3 years when the employer was uninsured."

10. Page 10.

Following: line 28.
Insert: "(2) The department may determine that the \$1,000 assessments that are charged against an insurer in each case of an industrial death under 39-71-902(1) must be paid to the uninsured employers' fund rather than the subsequent injury fund."
Renumber: subsequent subsection

11. Page 14, line 16.

Following: "~~approve~~"
Insert: "or disapprove"

-END-

2nd Reading

SENATE JOURNAL
FORTY-THIRD LEGISLATIVE DAY - FEBRUARY 24, 1997

SB 340 - Senator Grosfield moved SB 340 do pass. Motion carried with Senator Franklin voting nay.

SB 343 - Senator Thomas moved SB 343 do pass. Motion carried unanimously.

SB 349 - Senator Keating moved SB 349 do pass. Motion carried unanimously.

SB 350 - Senator McNutt moved SB 350 do pass. Motion carried as follows:

Yeas: Baer, Beck, Benedict, Bishop, Burnett, Cole, Crippen, Crismore, DePratu, Devlin, Emerson, Foster, Gage, Grosfield, Hargrove, Harp, Hertel, Holden, Jabs, Jenkins, Keating, Mahlum, McNutt, Mesaros, Miller, Mohl, Nelson, Sprague, Stang, Swysgood, Taylor, Thomas, Toews, Mr. President.

Total 34

Nays: Bartlett, Brooke, Christiaens, Doherty, Eck, Estrada, Franklin, Glaser, Halligan, Jergeson, Lynch, McCarthy, Shea, Van Valkenburg, Waterman, Wilson.

Total 16

Absent or not voting: None.

Total 0

Excused: None.

Total 0

SB 359 - Senator Mesaros moved SB 359, second reading copy, be amended as follows:

1. Page 2, lines 11 and 12.

Strike: "MAY NOT" on line 11 through "LANDS" on line 12

Insert: "shall withhold from sale an amount of state land within Daniels County equal to 6% of all land"

Amendment adopted unanimously.

Senator Toews moved SB 359, as amended, do pass. Motion carried as follows:

Yeas: Baer, Benedict, Burnett, Cole, Crismore, DePratu, Emerson, Estrada, Foster, Gage, Glaser, Grosfield, Hargrove, Harp, Hertel, Holden, Jabs, Jenkins, Keating, Lynch, Mahlum, McNutt, Mesaros, Miller, Mohl, Shea, Sprague, Stang, Swysgood, Taylor, Thomas, Toews, Mr. President.

Total 33

Nays: Bartlett, Beck, Bishop, Brooke, Christiaens, Crippen, Devlin, Doherty, Eck, Franklin, Halligan, Jergeson, McCarthy, Nelson, Van Valkenburg, Waterman, Wilson.

Total 17

Absent or not voting: None.

Total 0

Excused: None.

Total 0

3rd Reading

SENATE JOURNAL
FORTY-FOURTH LEGISLATIVE DAY - FEBRUARY 25, 1997

Absent or not voting: None.
Total 0

Excused: None.
Total 0

SB 343 passed as follows:

Yeas: Baer, Bartlett, Beck, Benedict, Bishop, Brooke, Burnett, Christiaens, Cole, Crippen, Crismore, DePratu, Devlin, Doherty, Eck, Emerson, Estrada, Foster, Franklin, Gage, Glaser, Grosfield, Halligan, Hargrove, Harp, Hertel, Holden, Jabs, Jenkins, Jergeson, Keating, Lynch, Mahlum, McCarthy, McNutt, Mesaros, Miller, Mohl, Nelson, Shea, Sprague, Stang, Swysgood, Taylor, Thomas, Toews, Van Valkenburg, Waterman, Wilson, Mr. President.
Total 50

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: None.
Total 0

SB 349 passed as follows:

Yeas: Baer, Bartlett, Beck, Benedict, Bishop, Brooke, Burnett, Christiaens, Cole, Crippen, Crismore, DePratu, Devlin, Doherty, Eck, Emerson, Estrada, Foster, Franklin, Gage, Glaser, Grosfield, Halligan, Hargrove, Harp, Hertel, Holden, Jabs, Jenkins, Jergeson, Keating, Lynch, Mahlum, McCarthy, McNutt, Mesaros, Miller, Mohl, Nelson, Shea, Sprague, Stang, Swysgood, Taylor, Thomas, Toews, Van Valkenburg, Waterman, Wilson, Mr. President.
Total 50

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: None.
Total 0

SB 350 passed as follows:

Yeas: Baer, Beck, Benedict, Burnett, Cole, Crippen, Crismore, DePratu, Devlin, Emerson, Foster, Gage, Grosfield, Hargrove, Harp, Hertel, Holden, Jabs, Jenkins, Keating, Mahlum, McNutt, Mesaros, Miller, Mohl, Nelson, Sprague, Stang, Swysgood, Taylor, Thomas, Toews, Mr. President.
Total 33

SENATE BILL NO. 349

INTRODUCED BY KEATING, SIMON

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE WORKERS' COMPENSATION REGULATORY FUNCTIONS OF THE DEPARTMENT OF LABOR AND INDUSTRY; PERMITTING AN INSURER ACCESS TO THE WORKERS' COMPENSATION DATA BASE SYSTEM; ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF LABOR AND INDUSTRY DETERMINE WAGES PAID IN PROPERTY OTHER THAN MONEY; ~~REQUIRING THAT THE INDEPENDENT CONTRACTOR EXEMPTION PROCESS BE SELF FUNDING;~~ ELIMINATING DEPARTMENT OF LABOR AND INDUSTRY CERTIFICATION OF TRADE GROUPS THAT WISH TO PURCHASE GROUP INSURANCE; ELIMINATING OBSOLETE REFERENCES TO THE ASSIGNED RISK POOL; CLARIFYING THE ADMINISTRATION OF THE UNINSURED EMPLOYERS' FUND; ~~INCREASING THE PENALTY AGAINST UNINSURED EMPLOYERS;~~ ELIMINATING THE UNDERINSURED EMPLOYERS' FUND; CLARIFYING THE PROCEDURES RELATING TO COMPROMISE SETTLEMENTS AND LUMP-SUM CONVERSIONS; CLARIFYING REHABILITATION PLAN AGREEMENTS; ELIMINATING MEDICAL ADVISORY COMMITTEES; ELIMINATING PLAN NO. 2 DEPOSIT REQUIREMENTS; PROVIDING FOR REFUND OF PLAN NO. 2 INSURER DEPOSITS AND THE TRANSFER OF SURPLUS FUNDS IN THE UNDERINSURED EMPLOYERS' FUND TO THE UNINSURED EMPLOYERS' FUND; PROVIDING THAT AN INDEPENDENT CONTRACTOR EXEMPTION REMAINS IN EFFECT FOR 3 YEARS; AMENDING SECTIONS 20-15-403, 33-2-119, 39-71-225, 39-71-303, 39-71-401, 39-71-433, 39-71-503, 39-71-504, 39-71-704, 39-71-721, 39-71-741, AND 39-71-2314, MCA; REPEALING SECTIONS 39-71-431, 39-71-531, 39-71-532, 39-71-533, 39-71-534, 39-71-1013, 39-71-1109, AND 39-71-2206, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO SECOND READING COPY (YELLOW) FOR COMPLETE TEXT.

SENATE BILL NO. 349

INTRODUCED BY KEATING, SIMON

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE WORKERS' COMPENSATION REGULATORY FUNCTIONS OF THE DEPARTMENT OF LABOR AND INDUSTRY; PERMITTING AN INSURER ACCESS TO THE WORKERS' COMPENSATION DATA BASE SYSTEM; ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF LABOR AND INDUSTRY DETERMINE WAGES PAID IN PROPERTY OTHER THAN MONEY; ~~REQUIRING THAT THE INDEPENDENT CONTRACTOR EXEMPTION PROCESS BE SELF FUNDING;~~ ELIMINATING DEPARTMENT OF LABOR AND INDUSTRY CERTIFICATION OF TRADE GROUPS THAT WISH TO PURCHASE GROUP INSURANCE; ELIMINATING OBSOLETE REFERENCES TO THE ASSIGNED RISK POOL; CLARIFYING THE ADMINISTRATION OF THE UNINSURED EMPLOYERS' FUND; ~~INCREASING THE PENALTY AGAINST UNINSURED EMPLOYERS;~~ ELIMINATING THE UNDERINSURED EMPLOYERS' FUND; CLARIFYING THE PROCEDURES RELATING TO COMPROMISE SETTLEMENTS AND LUMP-SUM CONVERSIONS; CLARIFYING REHABILITATION PLAN AGREEMENTS; ELIMINATING MEDICAL ADVISORY COMMITTEES; ELIMINATING PLAN NO. 2 DEPOSIT REQUIREMENTS; PROVIDING FOR REFUND OF PLAN NO. 2 INSURER DEPOSITS AND THE TRANSFER OF SURPLUS FUNDS IN THE UNDERINSURED EMPLOYERS' FUND TO THE UNINSURED EMPLOYERS' FUND; PROVIDING THAT AN INDEPENDENT CONTRACTOR EXEMPTION REMAINS IN EFFECT FOR 3 YEARS; AMENDING SECTIONS 20-15-403, 33-2-119, 39-71-225, 39-71-303, 39-71-401, 39-71-433, 39-71-503, 39-71-504, 39-71-704, 39-71-721, 39-71-741, AND 39-71-2314, MCA; REPEALING SECTIONS 39-71-431, 39-71-531, 39-71-532, 39-71-533, 39-71-534, 39-71-1013, 39-71-1109, AND 39-71-2206, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 20-15-403, MCA, is amended to read:

"20-15-403. Applications of other school district provisions. (1) When the term "school district" appears in the following sections outside of Title 20, the term includes community college districts and the provisions of those sections applicable to school districts apply to community college districts: 2-9-101, 2-9-111, 2-9-316, 2-16-114, 2-16-602, 2-16-614, 2-18-703, 7-3-1101, 7-6-2604, 7-6-2801, 7-7-123,

1 7-8-2214, 7-8-2216, 7-11-103, 7-12-4106, 7-13-110, 7-13-210, 7-15-4206, 10-1-703, 15-1-101,
2 15-6-204, 15-16-101, 15-16-605, 15-70-301, 17-5-101, 17-5-202, 17-6-103, 17-6-204, 17-6-213,
3 17-7-201, 18-1-201, 18-2-101, 18-2-103, 18-2-113, 18-2-114, 18-2-404, 18-2-432, 18-5-205, 19-1-102,
4 19-1-811, 22-1-309, 25-1-402, 27-18-406, 33-20-1104, 39-3-104, 39-4-107, 39-31-103, 39-31-304,
5 39-71-116, 39-71-117, 39-71-2106, ~~39-71-2206~~, 40-6-237, 41-3-1132, 49-3-101, 49-3-102, 53-20-304,
6 77-3-321, 82-10-201, 82-10-202, 82-10-203, 85-7-2158, and 90-6-208 and Rules 4D(2)(g) and 15(c),
7 M.R.Civ.P., as amended.

8 (2) When the term "school district" appears in a section outside of Title 20 but the section is not
9 listed in subsection (1), the school district provision does not apply to a community college district."

10
11 **Section 2.** Section 33-2-119, MCA, is amended to read:

12 **"33-2-119. Suspension or revocation for violations and special grounds.** (1) The commissioner
13 may, ~~in his discretion~~, suspend or revoke an insurer's certificate of authority if, after a hearing ~~thereon~~, he
14 the commissioner finds that the insurer has:

15 (a) violated any lawful order of the commissioner or any provision of this code other than those
16 for which suspension or revocation is mandatory;

17 (b) reinsured more than 90% of its risks resident, located, or to be performed in Montana, in
18 another insurer. In considering suspension or revocation, the commissioner shall consider all relevant
19 factors, including whether:

20 (i) after the reinsurance transaction all parties will be in compliance with Montana law; and

21 (ii) the transaction will substantially reduce protection and service to Montana policyholders;

22 ~~(c) failed to accept an equitable apportionment of assigned coverage as required by 39-71-431.~~

23 (2) The commissioner shall, after a hearing ~~thereon~~, suspend or revoke an insurer's certificate of
24 authority if ~~he~~ the commissioner finds that the insurer:

25 (a) is in unsound condition or in ~~such a~~ condition or using ~~such~~ methods or practices in the conduct
26 of its business ~~as to~~ that render its further transaction of insurance in Montana injurious or hazardous to
27 its policyholders or to the public;

28 (b) has refused to be examined or to produce its accounts, records, and files for examination or
29 if any of its officers have refused to give information with respect to its affairs, when required by the
30 commissioner;

(c) has failed to pay any final judgment rendered against it in Montana within 30 days after the judgment became final;

(d) with such frequency as to indicate its general business practice in Montana, has without just cause refused to pay a proper claim arising under its policies, whether the claim is in favor of an insured or is in favor of a third person with respect to the liability of an insured to the third person, or without just cause compels the insured or claimant to accept less than the amount due ~~him~~ the claimant or to employ attorneys or to bring suit against the insurer or insured to secure full payment or settlement of the claims;

(e) is affiliated with and under the same general management or interlocking directorate or ownership as another insurer ~~which that~~ transacts direct insurance in Montana without having a certificate of authority ~~therefor~~, except as permitted as to a surplus lines insurer under part 3 of this chapter.

(3) The commissioner may, ~~in his discretion and~~ without advance notice or a hearing ~~thereon~~, immediately suspend the certificate of authority of any insurer as to which proceedings for receivership, conservatorship, rehabilitation, or other delinquency proceedings have been commenced in any state."

Section 3. Section 39-71-225, MCA, is amended to read:

"39-71-225. Workers' compensation data base system. (1) The department shall develop a workers' compensation data base system to generate management information about Montana's workers' compensation system. The data base system must be used to collect and compile information from insurers, employers, medical providers, claimants, adjusters, rehabilitation providers, and the legal profession.

(2) Data collected must be used to provide:

(a) management information to the legislative and executive branches for the purpose of making policy and management decisions, including but not limited to:

(a)(i) performance information to enable the state to enact remedial efforts to ensure quality, control abuse, and enhance cost control;

(a)(ii) information on medical, indemnity, and rehabilitation costs, utilization, and trends; and

(a)(iii) information on litigation and attorney involvement for the purpose of identifying trends, problem areas, and the costs of legal involvement; and

(b) current and prior claim information to insurers, including insurers authorized to transact insurance in other states, to determine claims liability and fraud investigation and prosecution. IN ENSURING THAT THE RIGHT OF INDIVIDUAL PRIVACY IS NOT INFRINGED WITHOUT A SHOWING OF

1 COMPELLING STATE INTEREST, THE INFORMATION TO BE RELEASED, UPON WRITTEN REQUEST BY AN
2 AT-RISK INSURER, MAY BE ONLY THE CLAIMANT'S NAME, CLAIMANT'S IDENTIFICATION NUMBER,
3 PRIOR CLAIM NUMBER, DATE OF INJURY, BODY PART INVOLVED, AND NAME AND ADDRESS OF THE
4 INSURER AND CLAIM ADJUSTER ON EACH CLAIM FILED. INFORMATION OBTAINED BY AN INSURER
5 PURSUANT TO THIS SECTION MUST REMAIN CONFIDENTIAL AND MAY NOT BE DISCLOSED TO A THIRD
6 PARTY EXCEPT TO THE EXTENT NECESSARY FOR THE INVESTIGATION AND PROSECUTION OF FRAUD,
7 CLAIMS MANAGEMENT, OR CLAIMS PROCESSING.

8 ~~(2)~~(3) The department is authorized to collect from insurers, employers, medical providers, the legal
9 profession, and others the information necessary to generate the workers' compensation data base system.

10 ~~(3)~~(4) The workers' compensation data base system must be designed in accordance with the
11 following principles:

- 12 (a) avoidance of duplication and inconsistency;
- 13 (b) reasonable availability of data elements;
- 14 (c) value of information collected to be commensurate with the cost of retrieving the collected
15 information;
- 16 (d) uniformity to permit efficiency of collection and to allow interstate comparisons;
- 17 (e) a workable mechanism to ensure the accuracy of the data collected and to protect the
18 confidentiality of collected data;
- 19 (f) reasonable availability of the data at a fair cost to the user;
- 20 (g) a broad application to plan No. 1, plan No. 2, and plan No. 3 insurers;
- 21 (h) compatibility with electronic data reporting;
- 22 (i) reporting procedures that can be handled through private data collection systems that adhere
23 to the provisions of subsections ~~(3)(a)~~ (4)(a) through ~~(3)(h)~~ (4)(h);
- 24 (j) implementation of reporting requirements that allow reasonable lead time for compliance.

25 ~~(4)(5) (a) The department shall take all steps necessary to have the workers' compensation data~~
26 ~~base system fully operational by July 1, 1996.~~

27 ~~(b) After the workers' compensation data base system is operational, the~~ The department shall
28 ~~publish an annual a biennial report and may publish quarterly reports on the information compiled.~~

29 (6) Users of information obtained from the workers' compensation data base under this section are
30 liable for damages arising from misuse or unlawful dissemination of data base information."

1 **Section 4.** Section 39-71-303, MCA, is amended to read:

2 **"39-71-303. Work paid for in property other than money — ~~wages to be determined by~~**
3 **~~department. Where any~~ When an** employer procures any work to be done, payment for which is ~~to be~~ was
4 made in property other than money or its equivalent and the value of ~~which the~~ property is speculative or
5 intangible, the wages of the employees receiving ~~such the~~ compensation ~~shall be determined by the~~
6 ~~department in accordance with~~ must be the going wage for the same or similar work in the district or
7 locality where the ~~same is to be~~ work was performed."

8
9 **Section 5.** Section 39-71-401, MCA, is amended to read:

10 **"39-71-401. Employments covered and employments exempted.** (1) Except as provided in
11 subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to
12 all employees, as defined in 39-71-118. An employer who has any employee in service under any
13 appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the
14 provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers'
15 Compensation Act is subject to and bound by the compensation plan that has been elected by the
16 employer.

17 (2) Unless the employer elects coverage for these employments under this chapter and an insurer
18 allows an election, the Workers' Compensation Act does not apply to any of the following employments:

19 (a) household and domestic employment;

20 (b) casual employment as defined in 39-71-116;

21 (c) employment of a dependent member of an employer's family for whom an exemption may be
22 claimed by the employer under the federal Internal Revenue Code;

23 (d) employment of sole proprietors, working members of a partnership, or working members of a
24 member-managed limited liability company, except as provided in subsection (3);

25 (e) employment of a broker or ~~salesman~~ salesperson performing under a license issued by the board
26 of realty regulation;

27 (f) employment of a direct seller as defined in 26 U.S.C. 3508;

28 (g) employment for which a rule of liability for injury, occupational disease, or death is provided
29 under the laws of the United States;

30 (h) employment of a person performing services in return for aid or sustenance only, except

1 employment of a volunteer under 67-2-105;

2 (i) employment with a railroad engaged in interstate commerce, except that railroad construction
3 work is included in and subject to the provisions of this chapter;

4 (j) employment as an official, including a timer, referee, or judge, at a school amateur athletic
5 event, unless the person is otherwise employed by a school district;

6 (k) employment of a person performing services as a newspaper carrier or free-lance correspondent
7 if the person performing the services or a parent or guardian of the person performing the services in the
8 case of a minor has acknowledged in writing that the person performing the services and the services are
9 not covered. As used in this subsection, "free-lance correspondent" is a person who submits articles or
10 photographs for publication and is paid by the article or by the photograph. As used in this subsection,
11 "newspaper carrier":

12 (i) is a person who provides a newspaper with the service of delivering newspapers singly or in
13 bundles; but

14 (ii) does not include an employee of the paper who, incidentally to the employee's main duties,
15 carries or delivers papers.

16 (l) cosmetologist's services and barber's services as defined in 39-51-204(1)(l);

17 (m) a person who is employed by an enrolled tribal member or an association, business,
18 corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose
19 business is conducted solely within the exterior boundaries of an Indian reservation;

20 (n) employment of a jockey performing under a license issued by the board of horseracing from the
21 time the jockey reports to the scale room prior to a race through the time the jockey is weighed out after
22 a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing,
23 that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;

24 (o) employment of an employer's spouse for whom an exemption based on marital status may be
25 claimed by the employer under 26 U.S.C. 7703;

26 (p) a person who performs services as a petroleum land professional. As used in this subsection,
27 a "petroleum land professional" is a person who:

28 (i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in
29 negotiating a business agreement for the exploration or development of minerals;

30 (ii) is paid for services that are directly related to the completion of a contracted specific task rather

1 than on an hourly wage basis; and

2 (iii) performs all services as an independent contractor pursuant to a written contract.

3 (q) an officer of a quasi-public or a private corporation or manager of a manager-managed limited
4 liability company who qualifies under one or more of the following provisions:

5 (i) the officer or manager is engaged in the ordinary duties of a worker for the corporation or the
6 limited liability company and does not receive any pay from the corporation or the limited liability company
7 for performance of the duties;

8 (ii) the officer or manager is engaged primarily in household employment for the corporation or the
9 limited liability company;

10 (iii) the officer or manager owns 20% or more of the number of shares of stock in the corporation
11 or owns 20% or more of the limited liability company; or

12 (iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law,
13 daughter-in-law, nephew, niece, brother, or sister of a corporate officer who owns 20% or more of the
14 number of shares of stock in the corporation or who owns 20% or more of the limited liability company.

15 (3) (a) A sole proprietor, a working member of a partnership, or a working member of a
16 member-managed limited liability company who represents to the public that the person is an independent
17 contractor shall elect to be bound personally and individually by the provisions of compensation plan No.
18 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

19 (b) The application must be made in accordance with the rules adopted by the department. ~~There~~
20 ~~is no fee for the initial INITIAL application. Any subsequent application and any renewal.~~
21 ANY SUBSEQUENT APPLICATION must be accompanied by a \$25 application fee ~~determined by the~~
22 ~~department in an amount that is sufficient to fully fund the cost of administering the program~~
23 ACCOMPANIED BY A \$25 APPLICATION FEE. The application fee must be deposited in the administration
24 fund established in 39-71-201 ~~to offset the costs of administering the program~~ TO OFFSET THE COSTS
25 OF ADMINISTERING THE PROGRAM.

26 (c) When an application is approved by the department, it is conclusive as to the status of an
27 independent contractor and precludes the applicant from obtaining benefits under this chapter.

28 (d) The exemption, if approved, remains in effect for ~~4-year~~ 3 YEARS following the date of the
29 department's approval. To maintain the independent contractor status, an independent contractor shall
30 ~~annually~~ EVERY 3 YEARS submit a renewal application. A renewal application must be submitted for all

1 independent contractor exemptions approved as of July 1, 1995, or thereafter. The renewal application and
2 the \$25 renewal application fee must be received by the department at least 30 days prior to the
3 anniversary date of the previously approved exemption.

4 (e) A person who makes a false statement or misrepresentation concerning that person's status
5 as an exempt independent contractor is subject to a civil penalty of \$1,000. The department may impose
6 the penalty for each false statement or misrepresentation. The penalty must be paid to the uninsured
7 employers' fund. The lien provisions of 39-71-506 apply to the penalty imposed by this section.

8 (f) If the department denies the application for exemption, the applicant may contest the denial by
9 petitioning for review of the decision by an appeals referee in the manner provided for in 39-51-1109. An
10 applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance with
11 the procedure established in 39-51-2403 and 39-51-2404.

12 (4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its
13 employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private
14 corporation, or a manager-managed limited liability company may elect coverage for its corporate officers
15 or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following
16 manner:

17 (i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by
18 delivering the notice to the board of directors of the corporation or to the management organization of the
19 manager-managed limited liability company; or

20 (ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by
21 delivering the notice to the board of directors of the corporation or to the management organization of the
22 manager-managed limited liability company and to the insurer.

23 (b) If the employer changes plans or insurers, the employer's previous election is not effective and
24 the employer shall again serve notice to its insurer and to its board of directors or the management
25 organization of the manager-managed limited liability company if the employer elects to be bound.

26 (5) The appointment or election of an employee as an officer of a corporation, a partner in a
27 partnership, or a member in or a manager of a limited liability company for the purpose of exempting the
28 employee from coverage under this chapter does not entitle the officer, partner, member, or manager to
29 exemption from coverage.

30 (6) Each employer shall post a sign in the workplace at the locations where notices to employees

are normally posted, informing employees about the employer's current provision of workers' compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over the place of business or property for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided by the department, distributed through insurers or directly by the department, and posted by employers in accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a \$50 fine for each citation."

Section 6. Section 39-71-433, MCA, is amended to read:

"39-71-433. Group purchase of workers' compensation insurance. (1) ~~On receiving approval of the department, two~~ Two or more business entities may join together to form a group to purchase individual workers' compensation insurance policies covering each member of the group.

~~(2) To be eligible to join a new group that is forming, the department shall determine that a business entity is engaged in a business pursuit that is the same as or similar to the business pursuits of the other entities participating in the group.~~

~~(3) The department shall establish a certification program for groups organized under this section and shall issue to eligible business entities certificates of approval that authorize formation and maintenance of a group.~~

~~(4) The department by rule shall adopt forms, criteria, and procedures for the issuance of certificates of approval to groups under this section.~~

~~(5) A group certified under this section may add additional members without approval from the department if the additional members meet the specific criteria identified in the original application and any modifications to the criteria, as approved by the department.~~

~~(6)~~ (2) A group ~~certified~~ formed under this section may purchase individual workers' compensation insurance policies covering each member of the group from any insurer authorized to write workers' compensation insurance in this state, except that the state fund, as defined in 39-71-2312, has the right to refuse coverage of a group and its plan of operation but ~~cannot~~ may not refuse coverage to an individual employer. Under an individual policy, the group is entitled to a premium or volume discount that would be applicable to a policy of the combined premium amount of the individual policies.

1 ~~(7)(3)~~ A group shall apportion any discount or policyholder dividend received on workers'
2 compensation insurance coverage among the members of the group according to a formula adopted in the
3 plan of operation for the group.

4 ~~(8)(4)~~ A group shall adopt a plan of operation that must include the composition and selection of
5 a governing board, the methods for administering the group, the eligibility requirements to join the group,
6 and guidelines for the workers' compensation insurance coverage obtained by the group, including the
7 payment of premiums, the distribution of discounts, and the method for providing risk management. A
8 group shall file a copy of its plan of operation with the department."

9
10 **Section 7.** Section 39-71-503, MCA, is amended to read:

11 **"39-71-503. Administration of fund -- appropriation.** (1) The department shall administer the fund
12 and shall pay from it all expenses of administering the fund, all loss adjustment expenses for claims of
13 injured employees of uninsured employers, and all proper benefits to injured employees of uninsured
14 employers.

15 (2) Surpluses and reserves may not be kept for the fund. The department shall make payments that
16 it considers appropriate as funds become available from time to time. The payment of weekly disability
17 benefits takes ~~preference~~ precedence over the payment of medical benefits. Lump-sum payments of future
18 projected benefits, including impairment awards, may not be made from the fund. The board of investments
19 shall invest the money of the fund, and the investment income must be deposited in the fund. ~~The cost of~~
20 ~~administration of the fund must be paid out of the money in the fund.~~

21 (3) The amounts necessary for the payment of benefits from this fund are statutorily appropriated,
22 as provided in 17-7-502, from this fund."

23
24 **Section 8.** Section 39-71-504, MCA, is amended to read:

25 **"39-71-504. Funding of fund -- option for agreement between department and injured employee.**
26 The fund is funded in the following manner:

27 (1) (a) The department may require that the uninsured employer pay to the fund a penalty of either
28 up to ~~double the~~ DOUBLE the premium amount the employer would have paid on the payroll of the
29 employer's workers in this state if the employer had been enrolled with compensation plan No. 3 for the
30 period of time that the employer was uninsured or ~~\$200~~ \$10,000 \$200, whichever is greater. IN

DETERMINING THE PREMIUM AMOUNT FOR THE CALCULATION OF THE PENALTY UNDER THIS SUBSECTION, THE DEPARTMENT SHALL MAKE AN ASSESSMENT BASED ON HOW MUCH PREMIUM WOULD HAVE BEEN PAID ON THE EMPLOYER'S PAST 3-YEAR PAYROLL FOR PERIODS WITHIN THE 3 YEARS WHEN THE EMPLOYER WAS UNINSURED. ~~In determining the premium amount for the calculation of the penalty under this subsection, the department shall make an assessment on how much premium would have been paid on the employer's past 3-year payroll for periods within the 3 years when the employer was uninsured.~~

~~(2)(b)~~ The fund shall ~~receive~~ collect from an uninsured employer an amount equal to all benefits paid or to be paid from the fund to an injured employee of the uninsured employer.

~~(3) The department may determine that the \$1,000 assessments that are charged against an insurer in each case of an industrial death under 39-71-902(1) must be paid to the uninsured employers' fund rather than the subsequent injury fund.~~

(2) THE DEPARTMENT MAY DETERMINE THAT THE \$1,000 ASSESSMENTS THAT ARE CHARGED AGAINST AN INSURER IN EACH CASE OF AN INDUSTRIAL DEATH UNDER 39-71-902(1) MUST BE PAID TO THE UNINSURED EMPLOYERS' FUND RATHER THAN THE SUBSEQUENT INJURY FUND.

~~(4)(2)(3)~~ The department may enter into an agreement with the injured employee or the employee's beneficiaries to assign to the employee or the beneficiaries all or part of the funds ~~received~~ collected by the department from the uninsured employer pursuant to subsection ~~(2)~~ (1)(b)."

Section 9. Section 39-71-704, MCA, is amended to read:

"39-71-704. Payment of medical, hospital, and related services -- fee schedules and hospital rates -- fee limitation. (1) In addition to the compensation provided under this chapter and as an additional benefit separate and apart from compensation benefits actually provided, the following must be furnished:

(a) After the happening of a compensable injury and subject to other provisions of this chapter, the insurer shall furnish reasonable primary medical services for conditions resulting from the injury for those periods as the nature of the injury or the process of recovery requires.

(b) The insurer shall furnish secondary medical services only upon a clear demonstration of cost-effectiveness of the services in returning the injured worker to actual employment.

(c) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in

1 39-71-119, arising out of and in the course of employment.

2 (d) The insurer shall reimburse a worker for reasonable travel expenses incurred in travel to a
3 medical provider for treatment of an injury only if the travel is incurred at the request of the insurer.
4 Reimbursement must be at the rates allowed for reimbursement of travel by state employees.

5 (e) Except for the repair or replacement of a prosthesis furnished as a result of an industrial injury,
6 the benefits provided for in this section terminate when they are not used for a period of 60 consecutive
7 months.

8 (f) Notwithstanding subsection (1)(a), the insurer may not be required to furnish, after the worker
9 has achieved medical stability, palliative or maintenance care except:

10 (i) when provided to a worker who has been determined to be permanently totally disabled and for
11 whom it is medically necessary to monitor administration of prescription medication to maintain the worker
12 in a medically stationary condition; or

13 (ii) when necessary to monitor the status of a prosthetic device.

14 (g) If the worker's treating physician believes that palliative or maintenance care that would
15 otherwise not be compensable under subsection (1)(f) is appropriate to enable the worker to continue
16 current employment or that there is a clear probability of returning the worker to employment, the treating
17 physician shall first request approval from the insurer for the treatment. If approval is not granted, the
18 treating physician may request approval from the department for the treatment. The department shall
19 appoint a panel of physicians, including at least one treating physician from the area of specialty in which
20 the injured worker is being treated, pursuant to rules that the department may adopt, to review the
21 proposed treatment and determine its appropriateness.

22 (h) Notwithstanding any other provisions of this chapter, the department, by rule and upon the
23 advice of the professional licensing boards of practitioners affected by the rule, may exclude from
24 compensability any medical treatment that the department finds to be unscientific, unproved, outmoded,
25 or experimental.

26 (2) The department shall annually establish a schedule of fees for medical nonhospital services
27 necessary for the treatment of injured workers. Charges submitted by providers must be the usual and
28 customary charges for nonworkers' compensation patients. The department may require insurers to submit
29 information to be used in establishing the schedule. ~~The department shall establish utilization and treatment~~
30 ~~standards for all medical services provided for under this chapter in consultation with the standing medical~~

1 ~~advisory committees provided for in 39-71-1109.~~

2 (3) The department shall establish rates for hospital services necessary for the treatment of injured
3 workers. Beginning January 1, 1995, the rates may be based on per diem or diagnostic-related groups. The
4 rates established by the department pursuant to this subsection may not be less than medicaid
5 reimbursement rates. Approved rates must be in effect for a period of 12 months from the date of approval.
6 The department may coordinate this ratesetting function with other public agencies that have similar
7 responsibilities. For services available in Montana, insurers are not required to pay facilities located outside
8 Montana rates that are greater than those allowed for services delivered in Montana.

9 (4) The percentage increase in medical costs payable under this chapter may not exceed the annual
10 percentage increase in the state's average weekly wage as defined in 39-71-116.

11 (5) Payment pursuant to reimbursement agreements between managed care organizations or
12 preferred provider organizations and insurers is not bound by the provisions of this section.

13 (6) Disputes between an insurer and a medical service provider regarding the amount of a fee for
14 medical services must be resolved by a hearing before the department upon written application of a party
15 to the dispute.

16 (7) (a) After the initial visit, the worker is responsible for 20%, but not to exceed \$10, of the cost
17 of each subsequent visit to a medical service provider for treatment relating to a compensable injury or
18 occupational disease, unless the visit is to a medical service provider in a managed care organization as
19 requested by the insurer or is a visit to a preferred provider as requested by the insurer.

20 (b) After the initial visit, the worker is responsible for \$25 of the cost of each subsequent visit to
21 a hospital emergency department for treatment relating to a compensable injury or occupational disease.

22 (c) "Visit", as used in subsections (7)(a) and (7)(b), means each time the worker obtains services
23 relating to a compensable injury or occupational disease from:

24 (i) a treating physician;

25 (ii) a physical therapist;

26 (iii) a psychologist; or

27 (iv) hospital outpatient services available in a nonhospital setting.

28 (d) A worker is not responsible for the cost of a subsequent visit pursuant to subsection (7)(a) if
29 the visit is an examination requested by an insurer pursuant to 39-71-605."

1 **Section 10.** Section 39-71-721, MCA, is amended to read:

2 **"39-71-721. Compensation for injury causing death -- limitation.** (1) (a) If an injured employee dies
3 and the injury was the proximate cause of the death, the beneficiary of the deceased is entitled to the same
4 compensation as though the death occurred immediately following the injury. A beneficiary's eligibility for
5 benefits commences after the date of death, and the benefit level is established as set forth in subsection
6 (2).

7 (b) The insurer is entitled to recover any overpayments or compensation paid in a lump sum to a
8 worker prior to death but not yet recouped. The insurer shall recover the payments from the beneficiary's
9 biweekly payments as provided in 39-71-741~~(6)~~(3).

10 (2) To beneficiaries as defined in 39-71-116(5)(a) through (5)(d), weekly compensation benefits
11 for an injury causing death are 66 2/3% of the decedent's wages. The maximum weekly compensation
12 benefit may not exceed the state's average weekly wage at the time of injury. The minimum weekly
13 compensation benefit is 50% of the state's average weekly wage, but in no event may it exceed the
14 decedent's actual wages at the time of death.

15 (3) To beneficiaries as defined in 39-71-116(5)(e) and (5)(f), weekly benefits must be paid to the
16 extent of the dependency at the time of the injury, subject to a maximum of 66 2/3% of the decedent's
17 wages. The maximum weekly compensation may not exceed the state's average weekly wage at the time
18 of injury.

19 (4) If the decedent leaves no beneficiary, a lump-sum payment of \$3,000 must be paid to the
20 decedent's surviving parent or parents.

21 (5) If any beneficiary of a deceased employee dies, the right of the beneficiary to compensation
22 under this chapter ceases. Death benefits must be paid to a surviving spouse for 500 weeks subsequent
23 to the date of the deceased employee's death or until the spouse's remarriage, whichever occurs first. After
24 benefit payments cease to a surviving spouse, death benefits must be paid to beneficiaries, if any, as
25 defined in 39-71-116(5)(b) through (5)(d).

26 (6) In all cases, benefits must be paid to beneficiaries.

27 (7) Benefits paid under this section may not be adjusted for cost of living as provided in
28 39-71-702."

29

30 **Section 11.** Section 39-71-741, MCA, is amended to read:

1 "39-71-741. **Compromise settlements and lump-sum payments.** (1) By written agreement filed
2 with the department, benefits under this chapter may be converted in whole or in part into a lump sum.
3 An agreement is subject to department approval. If the department fails to approve OR DISAPPROVE the
4 agreement in writing within 14 days of the filing with the department, the agreement is approved. The
5 department shall directly notify a claimant of a department order approving or disapproving a claimant's
6 compromise or lump-sum payment. Upon approval, the agreement constitutes a compromise and release
7 settlement and may not be reopened by the department. The department may approve an agreement to
8 convert the following benefits to a lump sum only under the following conditions:

9 (a) ~~Benefits under this chapter may be converted in whole or in part to a lump sum:~~

10 (i) all benefits if a claimant and an insurer dispute the initial compensability of an injury; and

11 (ii) ~~if the claimant and insurer agree to a settlement.~~

12 (b) ~~The agreement is subject to department approval. The department may disapprove an~~
13 ~~agreement under this section only if there is not a~~ there is a ~~reasonable dispute over compensability;~~

14 (c) ~~Upon approval, the agreement constitutes a compromise and release settlement and may not~~
15 ~~be reopened by the department.~~

16 (2) (a)(b) Permanent permanent partial disability benefits ~~may be converted in whole or in part to~~
17 ~~a lump sum payment if:~~

18 (i) if an insurer has accepted initial liability for an injury; and

19 (ii) ~~the claimant and the insurer agree to a lump sum conversion.~~

20 (b) ~~The total of any permanent partial~~ lump-sum conversion in part that is awarded to a claimant
21 prior to the claimant's final award may not exceed the anticipated award under 39-71-703.

22 (c) ~~An agreement is subject to department approval. The department may disapprove an agreement~~
23 ~~under this subsection (1)(b) only if the department determines that the lump-sum conversion amount is~~
24 ~~inadequate. If disapproved, the department shall set forth in detail the reasons for disapproval.~~

25 (d) ~~Upon approval, a compromise and release settlement may not be reopened by the department.~~

26 (3)(c) Permanent permanent total disability benefits ~~may be converted in whole or in part to a lump~~
27 ~~sum. The~~ if the total of all lump-sum conversions in part that are awarded to a claimant may do not exceed
28 \$20,000. A conversion may be made only upon the written application of the injured worker with the
29 concurrence of the insurer. Approval of the lump sum payment rests in the discretion of the department.
30 The approval or award of a lump-sum permanent total disability payment in whole or in part by the

department or court must be the exception. It may be given only if the worker has demonstrated financial need that:

~~(a)(i)~~ relates to:

~~(i)(A)~~ the necessities of life;

~~(i)(B)~~ an accumulation of debt incurred prior to the injury; or

~~(i)(C)~~ a self-employment venture that is considered feasible under criteria set forth by the department; or

~~(b)(ii)~~ arises subsequent to the date of injury or arises because of reduced income as a result of the injury.

~~(4)(2)~~ Any lump-sum conversion of benefits under this section must be converted to present value using the rate prescribed under subsection ~~(5)(b)~~ (3)(b).

~~(5)(3)~~ (a) An insurer may recoup any lump-sum payment amortized at the rate established by the department, prorated biweekly over the projected duration of the compensation period.

(b) The rate adopted by the department must be based on the average rate for United States 10-year treasury bills in the previous calendar year.

(c) If the projected compensation period is the claimant's lifetime, the life expectancy must be determined by using the most recent table of life expectancy as published by the United States national center for health statistics.

~~(6) Subject to the other provisions of this section, the department shall approve or deny in writing compromise settlements and lump-sum payments agreed to by workers and insurers. The department shall directly notify a claimant of a department order approving or denying a claimant's compromise or lump-sum payment.~~

~~(7)(4)~~ A dispute between a claimant and an insurer regarding the conversion of biweekly payments into a lump-sum is considered a dispute, for which a mediator and the workers' compensation court have jurisdiction to make a determination. If an insurer and a claimant agree to a compromise and release settlement or a lump-sum payment but the department disapproves the agreement, the parties may request the workers' compensation court to review the department's decision."

Section 12. Section 39-71-2314, MCA, is amended to read:

"39-71-2314. State fund — ~~assigned risk plan~~ subject to laws applying to state agencies. (1) If

1 ~~an assigned risk plan is established and administered pursuant to 39-71-431, the state fund is subject to~~
2 ~~the premium tax liability for insurers as provided in 33-2-705 based on earned premium and paid on revenue~~
3 ~~from the previous fiscal year.~~

4 {2} The state fund is subject to laws that generally apply to state agencies, including but not limited
5 to Title 2, chapters 2, 3, 4 (only as provided in 39-71-2316), and 6, and Title 5, chapter 13. The state fund
6 is not exempt from a law that applies to state agencies unless that law specifically exempts the state fund
7 by name and clearly states that it is exempt from that law."

8
9 **NEW SECTION. Section 13. Transfer of deposits and surplus funds.** (1) All deposits held in trust
10 by the department of labor and industry pursuant to 39-71-2206 must be returned to the insurer who made
11 the deposit on or before December 31, 1997.

12 (2) Any surplus funds remaining in the underinsured employers' fund on [the effective date of this
13 act] must be deposited in the uninsured employers' fund provided for in 39-71-502.

14
15 **NEW SECTION. Section 14. Repealer.** Sections 39-71-431, 39-71-531, 39-71-532, 39-71-533,
16 39-71-534, 39-71-1013, 39-71-1109, and 39-71-2206, MCA, are repealed.

17
18 **NEW SECTION. Section 15. Severability.** If a part of [this act] is invalid, all valid parts that are
19 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
20 applications, the part remains in effect in all valid applications that are severable from the invalid
21 applications.

22
23 **NEW SECTION. Section 16. Effective date.** [This act] is effective July 1, 1997.

24 -END-

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & LABOR

Call to Order: By CHAIRMAN BRUCE SIMON, on March 24, 1997, at
8:00 AM, in Room 104.

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Paul Sliter, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Joe Barnett (R)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Charles R. Devaney (R)
Rep. David Ewer (D)
Rep. Kim Gillan (D)
Rep. Billie Krenzler (D)
Rep. Bob Lawson (R)
Rep. Rod Marshall (R)
Rep. Gay Ann Masolo (R)
Rep. Carolyn M. Squires (D)
Rep. Jay Stovall (R)
Rep. Cliff Trexler (R)
Rep. Joe Tropila (D)
Rep. Carley Tuss (D)

Members Excused: Rep. Wes Prouse (R)

Members Absent: None

Staff Present: Stephen Maly, Legislative Services Division
Pati O'Reilly, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 349; SB 375; SB 331; SB 375
(3/18/97)

Executive Action: SB 349; SB 375; SB 118; SB 234;
SB 259; HB 598

HEARING ON SB 349

Opening Statement by Sponsor: Senator Keating, S. D. 5,
introduced the bill. EXHIBIT 1.

{Tape: 1; Side: 1; Approx. Time Count: .01; Comments: None.}

Proponents Testimony:

Jacqueline Lenmark, American Insurance Assn.

{Tape: 1; Side: 1; Approx. Time Count: 4.9; Comments: None.}

George Wood, Ex. Dir. Mt. Self Insurers Assn.

{Tape: 1; Side: 1; Approx. Time Count: 15.7; Comments: None.}

Bob Worthington, MMIA

{Tape: 1; Side: 1; Approx. Time Count: 16.2; Comments: None.}

Ray Barnicoat, Montana Assn. of Counties

{Tape: 1; Side: 1; Approx. Time Count: 16.8; Comments: None.}

Howard Bailey, MT. School Groups

{Tape: 1; Side: 1; Approx. Time Count: 17.0; Comments: None.}

Mark Berry, State Fund

{Tape: 1; Side: 1; Approx. Time Count: 17.5; Comments: None.}

Chuck Hunter, MT Department of Labor

{Tape: 1; Side: 1; Approx. Time Count: 17.8; Comments: None.}

Opponents Testimony: None.

Questions From Committee Members and Responses:

{Tape: 1; Side: 1; Approx. Time Count: 21.5; Comments: None.}

Closing by Sponsor: Senator Keating closed. Rep. Simon to carry.

{Tape: 1; Side: 1; Approx. Time Count: 26.5; Comments: None.}

HEARING ON SB 290

Opening Statement by Sponsor: Senator Keating, S. D. 5,
introduced the bill.

{Tape: 1; Side: 1; Approx. Time Count: 28.4; Comments: None.}

Proponents' Testimony:

George Wood, MT Self Insurers, Ex. Secretary

{Tape: 1; Side: 2; Approx. Time Count: 1.9; Comments: None.}

Bob Worthington, MMIA

{Tape: 1; Side: 2; Approx. Time Count: 5.4; Comments: None.}

EXECUTIVE ACTION ON SB 349

Motion: Rep. Devaney moved do concur SB 349.

{Tape: 3; Side: 1; Approx. Time Count: 19.7; Comments: None.}

Motion/Vote: Rep. Simon moved to adopt Keating amendments segregating out no. 6. Motion passed unanimously.

{Tape: 3; Side: 1; Approx. Time Count: 20.0; Comments: None.}

Motion/Vote: Rep. Krenzler moved Krenzler amendments. Motion carried unanimously.

{Tape: 3; Side: 1; Approx. Time Count: 2.8; Comments: None.}

MOTION/VOTE: Rep. Devaney moved do concur SB 349 as amended. Motion carried unanimously. Rep. Simon to carry.

{Tape: 3; Side: 1; Approx. Time Count: 23.1; Comments: None.}

EXECUTIVE ACTION ON SB 331

Motion: Rep. Sliter moved do concur SB 331.

{Tape: 3; Side: 1; Approx. Time Count: 23.8; Comments: None.}

Motion: Rep. Sliter withdrew motion because amendments are not ready.

{Tape: 3; Side: 1; Approx. Time Count: 28.9; Comments: None.}

EXECUTIVE ACTION ON SB 375

Motion: Rep. Sliter moved do concur SB 375.

{Tape: 3; Side: 1; Approx. Time Count: 28.9; Comments: None.}

Motion/Vote: Rep. Sliter moved to adopt Thomas amendments. Motion carried unanimously.

{Tape: 3; Side: 1; Approx. Time Count: 29.1; Comments: None.}

Motion/Vote: Rep. Sliter moved do concur SB 375 as amended.

Motion carried unanimously. Rep. Cocchiarella to carry.

{Tape: 3; Side: 1; Approx. Time Count: 29.5; Comments: None.}

EXECUTIVE ACTION ON SB 118

Motion: Rep. Devaney moved do concur SB 118.

{Tape: 3; Side: 2; Approx. Time Count: 1.2; Comments: None.}

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL

DATE 3/24/97

NAME	PRESENT	ABSENT	EXCUSED
Bruce Simon, Chairman	✓		
Paul Sliter Vice Chairman	✓		
Bob Pavlovich, Vice Chairman	✓		
Joe Barnett	✓		
Rod Bitney	✓		
Sylvia Bookout	✓		
Charles Devaney	✓		
David Ewer	✓		
Kim Gillan	✓		
Billie Krenzler	✓		
Bob Lawson	✓		
Rod Marshall	✓		
Gay Ann Masolo	✓		
Wes Prouse			X
Carolyn Squires	X Carolyn		X
Jay Stovall	✓		
Cliff Trexler	✓		
Joe Tropila	✓		
Carley Tuss	—		

Amendments to Senate Bill No. 349
Proposed by the Department of Labor and Industry

EXHIBIT 1
DATE 3/24/97
SB 349

1. Page 4, Line 28.

Following: "~~an annual~~"

Strike: "a biennial"

Following: "publish"

Insert: "an annual"

2. Page 7, Line 20.

Following: "~~The~~"

Strike: "THERE IS NO"

Insert: "The"

Following: "application."

Strike: "."

Insert: "and"

3. Page 7, line 21.

Following: "APPLICATION"

Strike "must be"

Insert: "is \$25."

4. Page 7, Line 23.

Strike: "ACCOMPANIED BY A \$25 APPLICATION FEE."

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Neue Lee

SUB-COMMITTEE

DATE 3/24/97

BILL NO. _____ SPONSOR(S) _____

PLEASE PRINT

PLEASE PRINT

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
George Wood	MT. Self Insurers Assoc	SB-290 SB 331 SB 349 SB 375	
Howard R Bailey	MT Schools Group	" "	
Bob Olsen	MT Hospital Assoc	SB 331	
Steve Browning	MT Hosp Assn	SB 331	
Jacqueline Denmark	Am. Ins. Assn	SB 290 SB 349 SB 375	SB 331
Jim Brown	Bldg Code Bur., DOC	SB 290	
David Richhart	St Peters Hosp	SB 331	
Ray Barnicoat	Montana Association of Co.	SB 290 SB 331 SB 349 SB 375	
Mike Strand	Montana Independent Telecommunications Systems	SB 290	
Bob Worthington	MTIA	SB 290 SB 331 SB 375	
Jerry Driscoll	mt Building Trades	Amend SB 375	
Nancy Butler	State Fund	SB 331	
Mark E Barry	State Fund	SB 290 SB 349 SB 375	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.



HOUSE STANDING COMMITTEE REPORT

March 25, 1997

Page 1 of 2

Mr. Speaker: We, the committee on Business and Labor report that Senate Bill 349 (third reading copy -- blue) be concurred in as amended.

Signed:

A handwritten signature in dark ink, appearing to read "Bruce Simon".

Bruce Simon, Chair

And, that such amendments read:

Carried by: Rep. Simon

1. Title, lines 6 and 7.
Strike: "ELIMINATING" through "MONEY;"
2. Title, line 19.
Strike: "39-71-303,"
3. Page 3, line 27.
Following: "involvement;"
Strike: "and"
4. Page 3, line 28 through page 4, line 1.
Following: first "to" on line 28
Strike: remainder of line 28 through "determine" on line 29
Insert: "any insurer that is at risk on a claim, or that is
alleged to be at risk in any administrative or judicial
proceeding, to determine"
Following: "liability" on line 29
Strike: "and"
Insert: "or for"
Following: "investigation"
Strike: remainder of line 29 through "RELEASED," on page 4, line
1
Insert: ". The department may release information only"
Strike: "AN"
Insert: "the"
5. Page 4, line 2.
Strike: "AT-RISK"

Committee Vote:
Yes 19, No 0.

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650900SC.Hgd

95

Strike: "L"
Insert: "and"
Strike: "BE"
Insert: "disclose"

6. Page 4, lines 6 and 7.

Following: "FOR"

Strike: remainder of line 6 through "PROCESSING" on line 7

Insert: "determining claim liability or for fraud investigation;
and

(c) current and prior claim information to law
enforcement agencies for purposes of fraud investigation or
prosecution"

7. Page 4, line 28.

Following: "~~an annual~~"

Strike: "a biennial"

Insert: "an annual"

8. Page 5, lines 1 through 7.

Strike: section 4 in its entirety

Renumber: subsequent sections

9. Page 7, line 20.

Strike: "NO"

Insert: "a \$25"

10. Page 7, line 21.

Following: "APPLICATION"

Insert: "renewal"

11. Page 11.

Following: line 12

Strike: subsection (2) in its entirety

Renumber: subsequent subsection

12. Page 15, line 24.

Following: "inadequate"

Strike: "."

Insert: ";

13. Page 16, line 9.

Following: "injury"

Insert: ";

(d) except as otherwise provided in this chapter, all
other compromise settlements and lump sum payments agreed to by a
claimant and insurer"

-END-

2nd Reading

HOUSE JOURNAL
SEVENTIETH LEGISLATIVE DAY - APRIL 3, 1997

McGee, Menahan, Mood, Ohs, Pavlovich, Pease, Peck, Quilici, Raney, Ream, Rehbein, Rose, Ryan, Sands, Schmidt, Simon, Simpson, Sliter, Soft, Squires, Story, Stovall, Swanson, Tash, Taylor, Trexler, Tropila, Tuss, Wagner, Walters, Whitehead, Wiseman, Wyatt, Zook, Mr. Speaker.

Total 80

Noes: Adams, Ahner, Arnott, Barnett, Boharski, Cobb, Curtiss, DeBruycker, Feland, Jore, Keenan, Masolo, Mills, Orr, Prouse, Simpkins, Smith, Vick, Wells.

Total 19

Excused: None.

Total 0

Absent or not voting: Molnar.

Total 1

SB 349 - Representative Simon moved SB 349 be concurred in. Motion carried as follows:

Ayes: Ahner, Anderson, Arnott, Bankhead, Barnett, Barnhart, Beaudry, Bergman, Bergsagel, Bitney, Boharski, Bohlinger, Bookout, Brainard, Carey, Cobb, Cocchiarella, Curtiss, Denny, Devaney, Dowell, Ellingson, Ellis, Ewer, Feland, Galvin, Gillan, Grady, Grimes, Hagener, H.S. Hanson, M. Hanson, Harper, Harrington, Hayne, Heavy Runner, Hibbard, Holland, Hurdle, J. Johnson, R. Johnson, Kasten, Keenan, Kitzenberg, Knox, Kottel, Krenzler, Lawson, Marshall, Masolo, McCann, McCulloch, McGee, Menahan, Mills, Molnar, Mood, Ohs, Orr, Pavlovich, Pease, Peck, Prouse, Quilici, Raney, Ream, Rehbein, Rose, Ryan, Sands, Schmidt, Simon, Simpkins, Simpson, Sliter, Smith, Soft, Squires, Story, Stovall, Swanson, Tash, Taylor, Trexler, Tropila, Tuss, Vick, Wagner, Walters, Wells, Whitehead, Wiseman, Wyatt, Zook, Mr. Speaker.

Total 95

Noes: Adams, DeBruycker, Jore.

Total 3

Excused: None.

Total 0

Absent or not voting: Clark, Grinde.

Total 2

SB 361 - Representative Brainard moved SB 361 be concurred in. Motion carried as follows:

Ayes: Ahner, Anderson, Barnett, Barnhart, Beaudry, Bergman, Bergsagel, Bitney, Bohlinger, Carey, Clark, Cocchiarella, Devaney, Dowell, Ellingson, Ellis, Ewer, Galvin, Gillan, Grady, Grimes, Hagener, H.S. Hanson, M. Hanson, Harper, Harrington, Hayne, Heavy Runner, Hibbard, Holland, Hurdle, J. Johnson, R. Johnson, Keenan, Kitzenberg, Knox, Kottel, Lawson, Marshall, McCann, McCulloch, Menahan, Mills, Molnar, Mood, Ohs, Pavlovich, Pease, Peck, Prouse, Quilici, Raney, Ream, Rose, Ryan, Sands, Schmidt, Simpkins, Simpson, Soft, Squires, Stovall, Swanson, Tash, Taylor, Trexler, Tropila, Tuss, Whitehead, Wiseman, Wyatt, Zook, Mr. Speaker.

Total 73

Noes: Adams, Arnott, Bankhead, Boharski, Bookout, Brainard, Cobb, Curtiss, DeBruycker, Denny, Feland, Grinde, Jore, Kasten, Krenzler, Masolo, McGee, Orr, Rehbein, Sliter, Story, Vick, Wagner, Walters, Wells.

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HOUSE JOURNAL
SEVENTY-FIRST LEGISLATIVE DAY - APRIL 4, 1997

Total 0

Absent or not voting: Molnar, Smith.

Total 2

SB 344 concurred in as follows:

Ayes: Anderson, Bankhead, Barnhart, Beaudry, Bergman, Bergsagel, Bitney, Bohlinger, Bookout, Brainard, Carey, Clark, Cocchiarella, Denny, Dowell, Ellingson, Ellis, Ewer, Feland, Galvin, Gillan, Grimes, Grinde, Hagener, H.S. Hanson, M. Hanson, Harper, Harrington, Hayne, Heavy Runner, Hibbard, Holland, Hurdle, J. Johnson, R. Johnson, Kitzenberg, Knox, Kottel, Krenzler, Lawson, Marshall, Masolo, McCann, McCulloch, McGee, Menahan, Mills, Molnar, Mood, Ohs, Pavlovich, Pease, Peck, Quilici, Raney, Ream, Rehbein, Rose, Ryan, Sands, Schmidt, Simon, Simpkins, Simpson, Sliter, Soft, Squires, Story, Stovall, Swanson, Tash, Taylor, Trexler, Tropila, Tuss, Whitehead, Wiseman, Wyatt, Zook, Mr. Speaker.

Total 80

Noes: Adams, Ahner, Arnott, Barnett, Boharski, Cobb, Curtiss, DeBruycker, Devaney, Jore, Kasten, Keenan, Orr, Prouse, Vick, Wagner, Walters, Wells.

Total 18

Excused: None.

Total 0

Absent or not voting: Grady, Smith.

Total 2

SB 349 concurred in as follows:

Ayes: Ahner, Anderson, Arnott, Bankhead, Barnett, Barnhart, Beaudry, Bergman, Bergsagel, Bitney, Boharski, Bohlinger, Bookout, Brainard, Carey, Clark, Cobb, Cocchiarella, Curtiss, Denny, Devaney, Dowell, Ellingson, Ellis, Ewer, Feland, Galvin, Gillan, Grady, Grimes, Grinde, Hagener, H.S. Hanson, M. Hanson, Harper, Harrington, Hayne, Heavy Runner, Hibbard, Holland, Hurdle, J. Johnson, R. Johnson, Kasten, Keenan, Kitzenberg, Knox, Kottel, Krenzler, Lawson, Marshall, Masolo, McCann, McCulloch, McGee, Menahan, Mills, Molnar, Mood, Ohs, Orr, Pavlovich, Pease, Peck, Prouse, Quilici, Raney, Ream, Rehbein, Rose, Ryan, Sands, Schmidt, Simon, Simpkins, Simpson, Sliter, Soft, Squires, Story, Stovall, Swanson, Tash, Taylor, Trexler, Tropila, Tuss, Vick, Wagner, Walters, Wells, Whitehead, Wiseman, Wyatt, Zook, Mr. Speaker.

Total 96

Noes: Adams, DeBruycker, Jore.

Total 3

Excused: None.

Total 0

Absent or not voting: Smith.

Total 1

SB 361 concurred in as follows:

2nd Reading

SENATE JOURNAL
SEVENTY-FOURTH LEGISLATIVE DAY - APRIL 8, 1997

SB 349-House Amendments - Senator Keating moved House Amendments to SB 349 be concurred in. Motion carried unanimously.

SB 375-House Amendments - Senator Thomas moved House Amendments to SB 375 be concurred in. Motion carried unanimously.

Senator Harp moved the committee rise and report. Motion carried. Committee arose. Senate resumed. President Pro Tempore Crippen in the Chair. Chairman Holden moved that the Committee of the Whole report be adopted. Report adopted.

MOTIONS

HJR 30 - Senator Doherty moved he be allowed to change his vote on HJR 30, second reading, from nay to aye. Motion carried.

ANNOUNCEMENTS

Committee meetings were announced by committee chairmen.

Majority Leader Harp moved that the Senate adjourn until 1:00 p.m., Wednesday, April 9, 1997. Motion carried.

Senate adjourned at 3:04 p.m.

ROSANA SKELTON
Secretary of Senate

GARY AKLESTAD
President of the Senate

3-12-1998

SENATE JOURNAL
SEVENTY-FIFTH LEGISLATIVE DAY - APRIL 9, 1997

Excused: None.

Total 0

SB 349, as amended by the House passed as follows:

Yeas: Baer, Bartlett, Beck, Benedict, Bishop, Brooke, Burnett, Christiaens, Cole, Crippen, Crismore, DePratu, Devlin, Doherty, Eck, Emerson, Estrada, Foster, Franklin, Gage, Glaser, Grosfield, Halligan, Hargrove, Harp, Hertel, Holden, Jabs, Jenkins, Jergeson, Keating, Lynch, Mahlum, McCarthy, McNutt, Mesaros, Miller, Mohl, Nelson, Shea, Sprague, Stang, Swysgood, Taylor, Thomas, Toews, Van Valkenburg, Waterman, Wilson, Mr. President.

Total 50

Nays: None.

Total 0

Absent or not voting: None.

Total 0

Excused: None.

Total 0

SB 375, as amended by the House, passed as follows:

Yeas: Baer, Bartlett, Beck, Benedict, Bishop, Brooke, Burnett, Christiaens, Cole, Crippen, Crismore, DePratu, Devlin, Doherty, Eck, Emerson, Estrada, Foster, Franklin, Gage, Glaser, Grosfield, Halligan, Hargrove, Harp, Hertel, Holden, Jabs, Jenkins, Jergeson, Keating, Lynch, Mahlum, McCarthy, McNutt, Mesaros, Miller, Mohl, Nelson, Shea, Sprague, Stang, Swysgood, Taylor, Thomas, Toews, Van Valkenburg, Waterman, Wilson, Mr. President.

Total 50

Nays: None.

Total 0

Absent or not voting: None.

Total 0

Excused: None.

Total 0

HB 248, as amended, concurred in as follows:

Yeas: Baer, Bartlett, Beck, Benedict, Bishop, Brooke, Burnett, Christiaens, Crippen, DePratu, Devlin, Doherty, Eck, Emerson, Foster, Franklin, Halligan, Hargrove, Harp, Hertel, Jabs, Jergeson, Keating, Lynch, McCarthy, Nelson, Shea, Thomas, Van Valkenburg, Waterman, Wilson, Mr. President.

Total 32

Nays: Cole, Crismore, Estrada, Gage, Glaser, Grosfield, Holden, Jenkins, Mahlum, McNutt, Mesaros, Miller, Mohl, Sprague, Stang, Swysgood, Taylor, Toews.

SENATE BILL NO. 349

INTRODUCED BY KEATING, SIMON

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE WORKERS' COMPENSATION REGULATORY FUNCTIONS OF THE DEPARTMENT OF LABOR AND INDUSTRY; PERMITTING AN INSURER ACCESS TO THE WORKERS' COMPENSATION DATA BASE SYSTEM; ~~ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF LABOR AND INDUSTRY DETERMINE WAGES PAID IN PROPERTY OTHER THAN MONEY; REQUIRING THAT THE INDEPENDENT CONTRACTOR EXEMPTION PROCESS BE SELF-FUNDING;~~ ELIMINATING DEPARTMENT OF LABOR AND INDUSTRY CERTIFICATION OF TRADE GROUPS THAT WISH TO PURCHASE GROUP INSURANCE; ELIMINATING OBSOLETE REFERENCES TO THE ASSIGNED RISK POOL; CLARIFYING THE ADMINISTRATION OF THE UNINSURED EMPLOYERS' FUND; ~~INCREASING THE PENALTY AGAINST UNINSURED EMPLOYERS;~~ ELIMINATING THE UNDERINSURED EMPLOYERS' FUND; CLARIFYING THE PROCEDURES RELATING TO COMPROMISE SETTLEMENTS AND LUMP-SUM CONVERSIONS; CLARIFYING REHABILITATION PLAN AGREEMENTS; ELIMINATING MEDICAL ADVISORY COMMITTEES; ELIMINATING PLAN NO. 2 DEPOSIT REQUIREMENTS; PROVIDING FOR REFUND OF PLAN NO. 2 INSURER DEPOSITS AND THE TRANSFER OF SURPLUS FUNDS IN THE UNDERINSURED EMPLOYERS' FUND TO THE UNINSURED EMPLOYERS' FUND; PROVIDING THAT AN INDEPENDENT CONTRACTOR EXEMPTION REMAINS IN EFFECT FOR 3 YEARS; AMENDING SECTIONS 20-15-403, 33-2-119, 39-71-225, ~~39-71-303~~, 39-71-401, 39-71-433, 39-71-503, 39-71-504, 39-71-704, 39-71-721, 39-71-741, AND 39-71-2314, MCA; REPEALING SECTIONS 39-71-431, 39-71-531, 39-71-532, 39-71-533, 39-71-534, 39-71-1013, 39-71-1109, AND 39-71-2206, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 20-15-403, MCA, is amended to read:

"20-15-403. Applications of other school district provisions. (1) When the term "school district" appears in the following sections outside of Title 20, the term includes community college districts and the provisions of those sections applicable to school districts apply to community college districts: 2-9-101, 2-9-111, 2-9-316, 2-16-114, 2-16-602, 2-16-614, 2-18-703, 7-3-1101, 7-6-2604, 7-6-2801, 7-7-123,

1 7-8-2214, 7-8-2216, 7-11-103, 7-12-4106, 7-13-110, 7-13-210, 7-15-4206, 10-1-703, 15-1-101,
 2 15-6-204, 15-16-101, 15-16-605, 15-70-301, 17-5-101, 17-5-202, 17-6-103, 17-6-204, 17-6-213,
 3 17-7-201, 18-1-201, 18-2-101, 18-2-103, 18-2-113, 18-2-114, 18-2-404, 18-2-432, 18-5-205, 19-1-102,
 4 19-1-811, 22-1-309, 25-1-402, 27-18-406, 33-20-1104, 39-3-104, 39-4-107, 39-31-103, 39-31-304,
 5 39-71-116, 39-71-117, 39-71-2106, ~~39-71-2206~~, 40-6-237, 41-3-1132, 49-3-101, 49-3-102, 53-20-304,
 6 77-3-321, 82-10-201, 82-10-202, 82-10-203, 85-7-2158, and 90-6-208 and Rules 4D(2)(g) and 15(c),
 7 M.R.Civ.P., as amended.

8 (2) When the term "school district" appears in a section outside of Title 20 but the section is not
 9 listed in subsection (1), the school district provision does not apply to a community college district."

10
 11 **Section 2.** Section 33-2-119, MCA, is amended to read:

12 **"33-2-119. Suspension or revocation for violations and special grounds.** (1) The commissioner
 13 may, ~~in his discretion~~, suspend or revoke an insurer's certificate of authority if, after a hearing ~~thereon~~, ~~he~~
 14 the commissioner finds that the insurer has:

15 (a) violated any lawful order of the commissioner or any provision of this code other than those
 16 for which suspension or revocation is mandatory;

17 (b) reinsured more than 90% of its risks resident, located, or to be performed in Montana, in
 18 another insurer. In considering suspension or revocation, the commissioner shall consider all relevant
 19 factors, including whether:

20 (i) after the reinsurance transaction all parties will be in compliance with Montana law; and

21 (ii) the transaction will substantially reduce protection and service to Montana policyholders;

22 ~~(c) failed to accept an equitable apportionment of assigned coverage as required by 39-71-431.~~

23 (2) The commissioner shall, after a hearing ~~thereon~~, suspend or revoke an insurer's certificate of
 24 authority if ~~he~~ the commissioner finds that the insurer:

25 (a) is in unsound condition or in ~~such a~~ condition or using ~~such~~ methods or practices in the conduct
 26 of its business ~~as to that~~ render its further transaction of insurance in Montana injurious or hazardous to
 27 its policyholders or to the public;

28 (b) has refused to be examined or to produce its accounts, records, and files for examination or
 29 if any of its officers have refused to give information with respect to its affairs, when required by the
 30 commissioner;

(c) has failed to pay any final judgment rendered against it in Montana within 30 days after the judgment became final;

(d) with such frequency as to indicate its general business practice in Montana, has without just cause refused to pay a proper claim arising under its policies, whether the claim is in favor of an insured or is in favor of a third person with respect to the liability of an insured to the third person, or without just cause compels the insured or claimant to accept less than the amount due ~~him~~ the claimant or to employ attorneys or to bring suit against the insurer or insured to secure full payment or settlement of the claims;

(e) is affiliated with and under the same general management or interlocking directorate or ownership as another insurer ~~which~~ that transacts direct insurance in Montana without having a certificate of authority ~~therefor~~, except as permitted as to a surplus lines insurer under part 3 of this chapter.

(3) The commissioner may, ~~in his discretion and~~ without advance notice or a hearing ~~thereon~~, immediately suspend the certificate of authority of any insurer as to which proceedings for receivership, conservatorship, rehabilitation, or other delinquency proceedings have been commenced in any state."

Section 3. Section 39-71-225, MCA, is amended to read:

"39-71-225. Workers' compensation data base system. (1) The department shall develop a workers' compensation data base system to generate management information about Montana's workers' compensation system. The data base system must be used to collect and compile information from insurers, employers, medical providers, claimants, adjusters, rehabilitation providers, and the legal profession.

(2) Data collected must be used to provide:

(a) management information to the legislative and executive branches for the purpose of making policy and management decisions, including but not limited to:

~~(a)(i)~~ (i) performance information to enable the state to enact remedial efforts to ensure quality, control abuse, and enhance cost control;

~~(b)(ii)~~ (ii) information on medical, indemnity, and rehabilitation costs, utilization, and trends; ~~and~~

~~(c)(iii)~~ (iii) information on litigation and attorney involvement for the purpose of identifying trends, problem areas, and the costs of legal involvement; and

(b) current and prior claim information to insurers, including insurers authorized to transact insurance in other states, to determine ANY INSURER THAT IS AT RISK ON A CLAIM, OR THAT IS ALLEGED TO BE AT RISK IN ANY ADMINISTRATIVE OR JUDICIAL PROCEEDING, TO DETERMINE claims

~~liability and OR FOR fraud investigation and prosecution. IN ENSURING THAT THE RIGHT OF INDIVIDUAL~~
~~PRIVACY IS NOT INFRINGED WITHOUT A SHOWING OF COMPELLING STATE INTEREST, THE~~
~~INFORMATION TO BE RELEASED, THE DEPARTMENT MAY RELEASE INFORMATION ONLY UPON~~
~~WRITTEN REQUEST BY AN THE AT-RISK INSURER, AND MAY BE DISCLOSE ONLY THE CLAIMANT'S~~
~~NAME, CLAIMANT'S IDENTIFICATION NUMBER, PRIOR CLAIM NUMBER, DATE OF INJURY, BODY PART~~
~~INVOLVED, AND NAME AND ADDRESS OF THE INSURER AND CLAIM ADJUSTER ON EACH CLAIM FILED.~~
~~INFORMATION OBTAINED BY AN INSURER PURSUANT TO THIS SECTION MUST REMAIN CONFIDENTIAL~~
~~AND MAY NOT BE DISCLOSED TO A THIRD PARTY EXCEPT TO THE EXTENT NECESSARY FOR THE~~
~~INVESTIGATION AND PROSECUTION OF FRAUD, CLAIMS MANAGEMENT, OR CLAIMS PROCESSING~~
~~DETERMINING CLAIM LIABILITY OR FOR FRAUD INVESTIGATION; AND~~

(C) CURRENT AND PRIOR CLAIM INFORMATION TO LAW ENFORCEMENT AGENCIES FOR
PURPOSES OF FRAUD INVESTIGATION OR PROSECUTION.

~~(2)(3)~~ The department is authorized to collect from insurers, employers, medical providers, the legal
profession, and others the information necessary to generate the workers' compensation data base system.

~~(3)(4)~~ The workers' compensation data base system must be designed in accordance with the
following principles:

- (a) avoidance of duplication and inconsistency;
- (b) reasonable availability of data elements;
- (c) value of information collected to be commensurate with the cost of retrieving the collected
information;
- (d) uniformity to permit efficiency of collection and to allow interstate comparisons;
- (e) a workable mechanism to ensure the accuracy of the data collected and to protect the
confidentiality of collected data;
- (f) reasonable availability of the data at a fair cost to the user;
- (g) a broad application to plan No. 1, plan No. 2, and plan No. 3 insurers;
- (h) compatibility with electronic data reporting;
- (i) reporting procedures that can be handled through private data collection systems that adhere
to the provisions of subsections ~~(3)(a)~~ (4)(a) through ~~(3)(h)~~ (4)(h);
- (j) implementation of reporting requirements that allow reasonable lead time for compliance.

~~(4)(5) (a) The department shall take all steps necessary to have the workers' compensation data~~

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base system fully operational by July 1, 1995.

(b) ~~After the workers' compensation data base system is operational, the~~ The department shall publish ~~an annual a biennial~~ AN ANNUAL report and ~~may publish quarterly reports~~ on the information compiled.

(6) Users of information obtained from the workers' compensation data base under this section are liable for damages arising from misuse or unlawful dissemination of data base information.

~~Section 4. Section 39-71-303, MCA, is amended to read:~~

~~"39-71-303. Work paid for in property other than money -- wages to be determined by department. Where any When an employer procures any work to be done, payment for which is to be was made in property other than money or its equivalent and the value of which the property is speculative or intangible, the wages of the employees receiving such the compensation shall be determined by the department in accordance with must be the going wage for the same or similar work in the district or locality where the same is to be work was performed."~~

Section 4. Section 39-71-401, MCA, is amended to read:

"39-71-401. **Employments covered and employments exempted.** (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to all employees, as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows an election, the Workers' Compensation Act does not apply to any of the following employments:

- (a) household and domestic employment;
- (b) casual employment as defined in 39-71-116;
- (c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;
- (d) employment of sole proprietors, working members of a partnership, or working members of a

1 member-managed limited liability company, except as provided in subsection (3);

2 (e) employment of a broker or ~~salesman~~ salesperson performing under a license issued by the board
3 of realty regulation;

4 (f) employment of a direct seller as defined in ~~26~~ U.S.C. 3508;

5 (g) employment for which a rule of liability for injury, occupational disease, or death is provided
6 under the laws of the United States;

7 (h) employment of a person performing services in return for aid or sustenance only, except
8 employment of a volunteer under 67-2-105;

9 (i) employment with a railroad engaged in interstate commerce, except that railroad construction
10 work is included in and subject to the provisions of this chapter;

11 (j) employment as an official, including a timer, referee, or judge, at a school amateur athletic
12 event, unless the person is otherwise employed by a school district;

13 (k) employment of a person performing services as a newspaper carrier or free-lance correspondent
14 if the person performing the services or a parent or guardian of the person performing the services in the
15 case of a minor has acknowledged in writing that the person performing the services and the services are
16 not covered. As used in this subsection, "free-lance correspondent" is a person who submits articles or
17 photographs for publication and is paid by the article or by the photograph. As used in this subsection,
18 "newspaper carrier":

19 (i) is a person who provides a newspaper with the service of delivering newspapers singly or in
20 bundles; but

21 (ii) does not include an employee of the paper who, incidentally to the employee's main duties,
22 carries or delivers papers.

23 (l) cosmetologist's services and barber's services as defined in 39-51-204(1)(l);

24 (m) a person who is employed by an enrolled tribal member or an association, business,
25 corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose
26 business is conducted solely within the exterior boundaries of an Indian reservation;

27 (n) employment of a jockey performing under a license issued by the board of horseracing from the
28 time the jockey reports to the scale room prior to a race through the time the jockey is weighed out after
29 a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing,
30 that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;

(o) employment of an employer's spouse for whom an exemption based on marital status may be claimed by the employer under 26 U.S.C. 7703;

(p) a person who performs services as a petroleum land professional. As used in this subsection, a "petroleum land professional" is a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for services that are directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(q) an officer of a quasi-public or a private corporation or manager of a manager-managed limited liability company who qualifies under one or more of the following provisions:

(i) the officer or manager is engaged in the ordinary duties of a worker for the corporation or the limited liability company and does not receive any pay from the corporation or the limited liability company for performance of the duties;

(ii) the officer or manager is engaged primarily in household employment for the corporation or the limited liability company;

(iii) the officer or manager owns 20% or more of the number of shares of stock in the corporation or owns 20% or more of the limited liability company; or

(iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law, daughter-in-law, nephew, niece, brother, or sister of a corporate officer who owns 20% or more of the number of shares of stock in the corporation or who owns 20% or more of the limited liability company.

(3) (a) A sole proprietor, a working member of a partnership, or a working member of a member-managed limited liability company who represents to the public that the person is an independent contractor shall elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

(b) The application must be made in accordance with the rules adopted by the department. ~~There is no The~~ THERE IS NO A \$25 fee for the initial INITIAL application. ~~Any subsequent application and any renewal. ANY SUBSEQUENT APPLICATION RENEWAL~~ must be ~~accompanied by a \$25 application fee determined by the department in an amount that is sufficient to fully fund the cost of administering the program~~ ACCOMPANIED BY A \$25 APPLICATION FEE. The application fee must be deposited in the

administration fund established in 39-71-201 ~~to offset the costs of administering the program~~ TO OFFSET THE COSTS OF ADMINISTERING THE PROGRAM.

(c) When an application is approved by the department, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

(d) The exemption, if approved, remains in effect for ~~1 year~~ 3 YEARS following the date of the department's approval. To maintain the independent contractor status, an independent contractor shall ~~annually~~ EVERY 3 YEARS submit a renewal application. A renewal application must be submitted for all independent contractor exemptions approved as of July 1, 1995, or thereafter. The renewal application and the \$25 renewal application fee must be received by the department at least 30 days prior to the anniversary date of the previously approved exemption.

(e) A person who makes a false statement or misrepresentation concerning that person's status as an exempt independent contractor is subject to a civil penalty of \$1,000. The department may impose the penalty for each false statement or misrepresentation. The penalty must be paid to the uninsured employers' fund. The lien provisions of 39-71-506 apply to the penalty imposed by this section.

(f) If the department denies the application for exemption, the applicant may contest the denial by petitioning for review of the decision by an appeals referee in the manner provided for in 39-51-1109. An applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance with the procedure established in 39-51-2403 and 39-51-2404.

(4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private corporation, or a manager-managed limited liability company may elect coverage for its corporate officers or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following manner:

(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company; or

(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company and to the insurer.

(b) If the employer changes plans or insurers, the employer's previous election is not effective and

1 the employer shall again serve notice to its insurer and to its board of directors or the management
2 organization of the manager-managed limited liability company if the employer elects to be bound.

3 (5) The appointment or election of an employee as an officer of a corporation, a partner in a
4 partnership, or a member in or a manager of a limited liability company for the purpose of exempting the
5 employee from coverage under this chapter does not entitle the officer, partner, member, or manager to
6 exemption from coverage.

7 (6) Each employer shall post a sign in the workplace at the locations where notices to employees
8 are normally posted, informing employees about the employer's current provision of workers' compensation
9 insurance. A workplace is any location where an employee performs any work-related act in the course of
10 employment, regardless of whether the location is temporary or permanent, and includes the place of
11 business or property of a third person while the employer has access to or control over the place of
12 business or property for the purpose of carrying on the employer's usual trade, business, or occupation.
13 The sign must be provided by the department, distributed through insurers or directly by the department,
14 and posted by employers in accordance with rules adopted by the department. An employer who purposely
15 or knowingly fails to post a sign as provided in this subsection is subject to a \$50 fine for each citation."
16

17 **Section 5.** Section 39-71-433, MCA, is amended to read:

18 **"39-71-433. Group purchase of workers' compensation insurance.** (1) ~~On receiving approval of~~
19 ~~the department, two~~ Two or more business entities may join together to form a group to purchase individual
20 workers' compensation insurance policies covering each member of the group.

21 ~~(2) To be eligible to join a new group that is forming, the department shall determine that a~~
22 ~~business entity is engaged in a business pursuit that is the same as or similar to the business pursuits of~~
23 ~~the other entities participating in the group.~~

24 ~~(3) The department shall establish a certification program for groups organized under this section~~
25 ~~and shall issue to eligible business entities certificates of approval that authorize formation and maintenance~~
26 ~~of a group.~~

27 ~~(4) The department by rule shall adopt forms, criteria, and procedures for the issuance of~~
28 ~~certificates of approval to groups under this section.~~

29 ~~(5) A group certified under this section may add additional members without approval from the~~
30 ~~department if the additional members meet the specific criteria identified in the original application and any~~

1 ~~modifications to the criteria, as approved by the department.~~

2 ~~(6)(2)~~ A group ~~certified~~ formed under this section may purchase individual workers' compensation
3 insurance policies covering each member of the group from any insurer authorized to write workers'
4 compensation insurance in this state, except that the state fund, as defined in 39-71-2312, has the right
5 to refuse coverage of a group and its plan of operation but ~~cannot~~ may not refuse coverage to an individual
6 employer. Under an individual policy, the group is entitled to a premium or volume discount that would be
7 applicable to a policy of the combined premium amount of the individual policies.

8 ~~(7)(3)~~ A group shall apportion any discount or policyholder dividend received on workers'
9 compensation insurance coverage among the members of the group according to a formula adopted in the
10 plan of operation for the group.

11 ~~(9)(4)~~ A group shall adopt a plan of operation that must include the composition and selection of
12 a governing board, the methods for administering the group, the eligibility requirements to join the group,
13 and guidelines for the workers' compensation insurance coverage obtained by the group, including the
14 payment of premiums, the distribution of discounts, and the method for providing risk management. A
15 ~~group shall file a copy of its plan of operation with the department."~~

16
17 **Section 6.** Section 39-71-503, MCA, is amended to read:

18 **"39-71-503. Administration of fund -- appropriation.** (1) The department shall administer the fund
19 and shall pay from it all expenses of administering the fund, all loss adjustment expenses for claims of
20 injured employees of uninsured employers, and all proper benefits to injured employees of uninsured
21 employers.

22 (2) Surpluses and reserves may not be kept for the fund. The department shall make payments that
23 it considers appropriate as funds become available from time to time. The payment of weekly disability
24 benefits takes ~~preference~~ precedence over the payment of medical benefits. Lump-sum payments of future
25 projected benefits, including impairment awards, may not be made from the fund. The board of investments
26 shall invest the money of the fund, and the investment income must be deposited in the fund. ~~The cost of~~
27 ~~administration of the fund must be paid out of the money in the fund.~~

28 (3) The amounts necessary for the payment of benefits from this fund are statutorily appropriated,
29 as provided in 17-7-502, from this fund."
30

Section 7. Section 39-71-504, MCA, is amended to read:

"39-71-504. Funding of fund -- option for agreement between department and injured employee.

The fund is funded in the following manner:

(1) (a) The department may require that the uninsured employer pay to the fund a penalty of either up to ~~double treble~~ DOUBLE the premium amount the employer would have paid on the payroll of the employer's workers in this state if the employer had been enrolled with compensation plan No. 3 ~~for the period of time that the employer was uninsured~~ or ~~\$200 \$10,000~~ \$200, whichever is greater. IN DETERMINING THE PREMIUM AMOUNT FOR THE CALCULATION OF THE PENALTY UNDER THIS SUBSECTION, THE DEPARTMENT SHALL MAKE AN ASSESSMENT BASED ON HOW MUCH PREMIUM WOULD HAVE BEEN PAID ON THE EMPLOYER'S PAST 3-YEAR PAYROLL FOR PERIODS WITHIN THE 3 YEARS WHEN THE EMPLOYER WAS UNINSURED. ~~In determining the premium amount for the calculation of the penalty under this subsection, the department shall make an assessment on how much premium would have been paid on the employer's past 3-year payroll for periods within the 3 years when the employer was uninsured.~~

(2)(b) The fund shall ~~receive~~ collect from an uninsured employer an amount equal to all benefits paid or to be paid from the fund to an injured employee of the uninsured employer.

(3) ~~The department may determine that the \$1,000 assessments that are charged against an insurer in each case of an industrial death under 39-71-902(1) must be paid to the uninsured employers' fund rather than the subsequent injury fund.~~

(2) THE DEPARTMENT MAY DETERMINE THAT THE \$1,000 ASSESSMENTS THAT ARE CHARGED AGAINST AN INSURER IN EACH CASE OF AN INDUSTRIAL DEATH UNDER 39-71-902(1) MUST BE PAID TO THE UNINSURED EMPLOYERS' FUND RATHER THAN THE SUBSEQUENT INJURY FUND.

~~(4)(2)(3)(2)~~ (2) The department may enter into an agreement with the injured employee or the employee's beneficiaries to assign to the employee or the beneficiaries all or part of the funds ~~received~~ collected by the department from the uninsured employer pursuant to subsection (2) (1)(b)."

Section 8. Section 39-71-704, MCA, is amended to read:

"39-71-704. Payment of medical, hospital, and related services -- fee schedules and hospital rates -- fee limitation. (1) In addition to the compensation provided under this chapter and as an additional benefit separate and apart from compensation benefits actually provided, the following must be furnished:

1 (a) After the happening of a compensable injury and subject to other provisions of this chapter, the
2 insurer shall furnish reasonable primary medical services for conditions resulting from the injury for those
3 periods as the nature of the injury or the process of recovery requires.

4 (b) The insurer shall furnish secondary medical services only upon a clear demonstration of
5 cost-effectiveness of the services in returning the injured worker to actual employment.

6 (c) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses,
7 prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in
8 39-71-119, arising out of and in the course of employment.

9 (d) The insurer shall reimburse a worker for reasonable travel expenses incurred in travel to a
10 medical provider for treatment of an injury only if the travel is incurred at the request of the insurer.
11 Reimbursement must be at the rates allowed for reimbursement of travel by state employees.

12 (e) Except for the repair or replacement of a prosthesis furnished as a result of an industrial injury,
13 the benefits provided for in this section terminate when they are not used for a period of 60 consecutive
14 months.

15 (f) Notwithstanding subsection (1)(a), the insurer may not be required to furnish, after the worker
16 has achieved medical stability, palliative or maintenance care except:

17 (i) when provided to a worker who has been determined to be permanently totally disabled and for
18 whom it is medically necessary to monitor administration of prescription medication to maintain the worker
19 in a medically stationary condition; or

20 (ii) when necessary to monitor the status of a prosthetic device.

21 (g) If the worker's treating physician believes that palliative or maintenance care that would
22 otherwise not be compensable under subsection (1)(f) is appropriate to enable the worker to continue
23 current employment or that there is a clear probability of returning the worker to employment, the treating
24 physician shall first request approval from the insurer for the treatment. If approval is not granted, the
25 treating physician may request approval from the department for the treatment. The department shall
26 appoint a panel of physicians, including at least one treating physician from the area of specialty in which
27 the injured worker is being treated, pursuant to rules that the department may adopt, to review the
28 proposed treatment and determine its appropriateness.

29 (h) Notwithstanding any other provisions of this chapter, the department, by rule and upon the
30 advice of the professional licensing boards of practitioners affected by the rule, may exclude from

1 compensability any medical treatment that the department finds to be unscientific, unproved, outmoded,
2 or experimental.

3 (2) The department shall annually establish a schedule of fees for medical nonhospital services
4 necessary for the treatment of injured workers. Charges submitted by providers must be the usual and
5 customary charges for nonworkers' compensation patients. The department may require insurers to submit
6 information to be used in establishing the schedule. ~~The department shall establish utilization and treatment~~
7 ~~standards for all medical services provided for under this chapter in consultation with the standing medical~~
8 ~~advisory committees provided for in 39-71-1109.~~

9 (3) The department shall establish rates for hospital services necessary for the treatment of injured
10 workers. Beginning January 1, 1995, the rates may be based on per diem or diagnostic-related groups. The
11 rates established by the department pursuant to this subsection may not be less than medicaid
12 reimbursement rates. Approved rates must be in effect for a period of 12 months from the date of approval.
13 The department may coordinate this ratesetting function with other public agencies that have similar
14 responsibilities. For services available in Montana, insurers are not required to pay facilities located outside
15 Montana rates that are greater than those allowed for services delivered in Montana.

16 (4) The percentage increase in medical costs payable under this chapter may not exceed the annual
17 percentage increase in the state's average weekly wage as defined in 39-71-116.

18 (5) Payment pursuant to reimbursement agreements between managed care organizations or
19 preferred provider organizations and insurers is not bound by the provisions of this section.

20 (6) Disputes between an insurer and a medical service provider regarding the amount of a fee for
21 medical services must be resolved by a hearing before the department upon written application of a party
22 to the dispute.

23 (7) (a) After the initial visit, the worker is responsible for 20%, but not to exceed \$10, of the cost
24 of each subsequent visit to a medical service provider for treatment relating to a compensable injury or
25 occupational disease, unless the visit is to a medical service provider in a managed care organization as
26 requested by the insurer or is a visit to a preferred provider as requested by the insurer.

27 (b) After the initial visit, the worker is responsible for \$25 of the cost of each subsequent visit to
28 a hospital emergency department for treatment relating to a compensable injury or occupational disease.

29 (c) "Visit", as used in subsections (7)(a) and (7)(b), means each time the worker obtains services
30 relating to a compensable injury or occupational disease from:

- 1 (i) a treating physician;
2 (ii) a physical therapist;
3 (iii) a psychologist; or
4 (iv) hospital outpatient services available in a nonhospital setting.
5 (d) A worker is not responsible for the cost of a subsequent visit pursuant to subsection (7)(a) if
6 the visit is an examination requested by an insurer pursuant to 39-71-605."

7
8 **Section 9.** Section 39-71-721, MCA, is amended to read:

9 **"39-71-721. Compensation for injury causing death -- limitation.** (1) (a) If an injured employee dies
10 and the injury was the proximate cause of the death, the beneficiary of the deceased is entitled to the same
11 compensation as though the death occurred immediately following the injury. A beneficiary's eligibility for
12 benefits commences after the date of death, and the benefit level is established as set forth in subsection
13 (2).

14 (b) The insurer is entitled to recover any overpayments or compensation paid in a lump sum to a
15 worker prior to death but not yet recouped. The insurer shall recover the payments from the beneficiary's
16 biweekly payments as provided in 39-71-741~~(5)~~(3).

17 (2) To beneficiaries as defined in 39-71-116(5)(a) through (5)(d), weekly compensation benefits
18 for an injury causing death are 66 2/3% of the decedent's wages. The maximum weekly compensation
19 benefit may not exceed the state's average weekly wage at the time of injury. The minimum weekly
20 compensation benefit is 50% of the state's average weekly wage, but in no event may it exceed the
21 decedent's actual wages at the time of death.

22 (3) To beneficiaries as defined in 39-71-116(5)(e) and (5)(f), weekly benefits must be paid to the
23 extent of the dependency at the time of the injury, subject to a maximum of 66 2/3% of the decedent's
24 wages. The maximum weekly compensation may not exceed the state's average weekly wage at the time
25 of injury.

26 (4) If the decedent leaves no beneficiary, a lump-sum payment of \$3,000 must be paid to the
27 decedent's surviving parent or parents.

28 (5) If any beneficiary of a deceased employee dies, the right of the beneficiary to compensation
29 under this chapter ceases. Death benefits must be paid to a surviving spouse for 500 weeks subsequent
30 to the date of the deceased employee's death or until the spouse's remarriage, whichever occurs first. After

1 benefit payments cease to a surviving spouse, death benefits must be paid to beneficiaries, if any, as
2 defined in 39-71-116(5)(b) through (5)(d).

3 (6) In all cases, benefits must be paid to beneficiaries.

4 (7) Benefits paid under this section may not be adjusted for cost of living as provided in
5 39-71-702."

6
7 **Section 10.** Section 39-71-741, MCA, is amended to read:

8 **"39-71-741. Compromise settlements and lump-sum payments.** (1) By written agreement filed
9 with the department, benefits under this chapter may be converted in whole or in part into a lump sum.
10 An agreement is subject to department approval. If the department fails to approve OR DISAPPROVE the
11 agreement in writing within 14 days of the filing with the department, the agreement is approved. The
12 department shall directly notify a claimant of a department order approving or disapproving a claimant's
13 compromise or lump-sum payment. Upon approval, the agreement constitutes a compromise and release
14 settlement and may not be reopened by the department. The department may approve an agreement to
15 convert the following benefits to a lump sum only under the following conditions:

16 (a) ~~Benefits under this chapter may be converted in whole or in part to a lump sum:~~

17 (i) ~~all benefits~~ if a claimant and an insurer dispute the initial compensability of an injury; and

18 (ii) ~~if the claimant and insurer agree to a settlement.~~

19 (b) ~~The agreement is subject to department approval. The department may disapprove an~~
20 ~~agreement under this section only if there is not a~~ there is a reasonable dispute over compensability;

21 (c) ~~Upon approval, the agreement constitutes a compromise and release settlement and may not~~
22 ~~be reopened by the department.~~

23 (2) (a) ~~(b) Permanent permanent~~ partial disability benefits ~~may be converted in whole or in part to~~
24 ~~a lump-sum payment if:~~

25 (i) ~~if~~ if an insurer has accepted initial liability for an injury; and

26 (ii) ~~the claimant and the insurer agree to a lump-sum conversion.~~

27 (b) ~~The total of any permanent partial~~ lump-sum conversion in part that is awarded to a claimant
28 prior to the claimant's final award may not exceed the anticipated award under 39-71-703.

29 (c) ~~An agreement is subject to department approval. The department may disapprove an agreement~~
30 under this subsection (1)(b) only if the department determines that the lump-sum conversion amount is

1 inadequate. If disapproved, the department shall set forth in detail the reasons for disapproval.

2 ~~(d) Upon approval, a compromise and release settlement may not be reopened by the department.~~

3 ~~(3)(c) Permanent permanent~~ total disability benefits may be converted in whole or in part to a lump
4 sum. ~~The if the~~ total of all lump-sum conversions in part that are awarded to a claimant may do not exceed
5 \$20,000. ~~A conversion may be made only upon the written application of the injured worker with the~~
6 ~~concurrence of the insurer. Approval of the lump-sum payment rests in the discretion of the department.~~
7 The approval or award of a lump-sum permanent total disability payment in whole or in part by the
8 department or court must be the exception. It may be given only if the worker has demonstrated financial
9 need that:

10 ~~(a)(i)~~ relates to:

11 ~~(i)(A)~~ the necessities of life;

12 ~~(ii)(B)~~ an accumulation of debt incurred prior to the injury; or

13 ~~(iii)(C)~~ a self-employment venture that is considered feasible under criteria set forth by the
14 department; or

15 ~~(b)(ii)~~ arises subsequent to the date of injury or arises because of reduced income as a result of
16 the injury; OR

17 (D) EXCEPT AS OTHERWISE PROVIDED IN THIS CHAPTER, ALL OTHER COMPROMISE
18 SETTLEMENTS AND LUMP-SUM PAYMENTS AGREED TO BY A CLAIMANT AND INSURER.

19 ~~(4)(2)~~ Any lump-sum conversion of benefits under this section must be converted to present value
20 using the rate prescribed under subsection ~~(5)(b)~~ (3)(b).

21 ~~(5)(3)~~ (a) An insurer may recoup any lump-sum payment amortized at the rate established by the
22 department, prorated biweekly over the projected duration of the compensation period.

23 (b) The rate adopted by the department must be based on the average rate for United States
24 10-year treasury bills in the previous calendar year.

25 (c) If the projected compensation period is the claimant's lifetime, the life expectancy must be
26 determined by using the most recent table of life expectancy as published by the United States national
27 center for health statistics.

28 ~~(6) Subject to the other provisions of this section, the department shall approve or deny in writing~~
29 ~~compromise settlements and lump-sum payments agreed to by workers and insurers. The department shall~~
30 ~~directly notify a claimant of a department order approving or denying a claimant's compromise or lump-sum~~

1 ~~payment.~~

2 ~~(7)(4)~~ A dispute between a claimant and an insurer regarding the conversion of biweekly payments
3 into a lump-sum is considered a dispute, for which a mediator and the workers' compensation court have
4 jurisdiction to make a determination. If an insurer and a claimant agree to a compromise and release
5 settlement or a lump-sum payment but the department disapproves the agreement, the parties may request
6 the workers' compensation court to review the department's decision."

7
8 **Section 11.** Section 39-71-2314, MCA, is amended to read:

9 **"39-71-2314. State fund** ~~assigned risk plan subject to laws applying to state agencies. (1) If~~
10 ~~an assigned risk plan is established and administered pursuant to 39-71-431, the state fund is subject to~~
11 ~~the premium tax liability for insurers as provided in 33-2-705 based on earned premium and paid on revenue~~
12 ~~from the previous fiscal year.~~

13 ~~(2)~~ The state fund is subject to laws that generally apply to state agencies, including but not limited
14 to Title 2, chapters 2, 3, 4 (only as provided in 39-71-2316), and 6, and Title 5, chapter 13. The state fund
15 is not exempt from a law that applies to state agencies unless that law specifically exempts the state fund
16 by name and clearly states that it is exempt from that law."

17
18 **NEW SECTION. Section 12. Transfer of deposits and surplus funds.** (1) All deposits held in trust
19 by the department of labor and industry pursuant to 39-71-2206 must be returned to the insurer who made
20 the deposit on or before December 31, 1997.

21 (2) Any surplus funds remaining in the underinsured employers' fund on [the effective date of this
22 act] must be deposited in the uninsured employers' fund provided for in 39-71-502.

23
24 **NEW SECTION. Section 13. Repealer.** Sections 39-71-431, 39-71-531, 39-71-532, 39-71-533,
25 39-71-534, 39-71-1013, 39-71-1109, and 39-71-2206, MCA, are repealed.

26
27 **NEW SECTION. Section 14. Severability.** If a part of [this act] is invalid, all valid parts that are
28 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
29 applications, the part remains in effect in all valid applications that are severable from the invalid
30 applications.

1 NEW SECTION. Section 15. Effective date. [This act] is effective July 1, 1997.

2 -END-